UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA *
*
vs. * CIVIL ACTION
* No. 07-12064-JLT
TODD CARTA *
*
* * * * * * * * * * * * * * * * *

BEFORE THE HONORABLE JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE
**DAY THREE**
**NONJURY TRIAL**

A P P E A R A N C E S

OFFICE OF THE UNITED STATES ATTORNEY
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
for the United States
By: Eve A. Piemonte Stacey, AUSA
Jennifer C. Boal, AUSA

FEDERAL DEFENDER OFFICE
408 Atlantic Avenue, Suite 328
Boston, Massachusetts 02210
for the defendant
By: Page Kelley, Esq.
Ian Gold, Esq.

Courtroom No. 22
John J. Moakley Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
February 11, 2009
10:10 a.m.

CAROL LYNN SCOTT, CSR, RMR
Official Court Reporter
One Courthouse Way, Suite 7204
Boston, Massachusetts 02210
(617) 330-1377

# I N D E X



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# E X H I B I T S

**P R O C E E D I N G S**

**THE COURT:** Good morning, everybody.

**COUNSEL:** Good morning, Your Honor.

**THE COURT:** Sit down, please.

(Whereupon, the Court and the Clerk conferred.)

**THE COURT:** Okay. Where are we?

**MS. KELLEY:** Good morning, Your Honor.

I thought we would, with the Court's permission, we would go out of order at this time. Dr. Bard's cross is not yet complete but I would like to call Dr. Randall Wallace who is here from Connecticut.

**THE COURT:** Okay. No objection I take it?

**MS. STACEY:** There is no objection, Your Honor.

**THE COURT:** All right.

**MS. KELLEY:** I expect the probation officer to be here at eleven so hopefully that will run smoothly.

**THE COURT:** Okay.

**MS. KELLEY:** So Mr. Carta calls Dr. Randy Wallace.

**THE COURT:** Okay.

**THE CLERK:** Right up here (indicating), sir.

**DR. RANDALL KENT WALLACE, Sworn**

**THE CLERK:** Thank you. You may be seated.

**DIRECT EXAMINATION**

BY MS. KELLEY

**Q.** Good morning, Dr. Wallace.

**A.** Good morning.

**Q.** If you can just sit down and move yourself up toward that microphone but not too close.

Could you state your full name for the record, please.

**A.** Dr. Randall Kent Wallace.

**Q.** And what type of doctor are you?

**A.** I'm a licensed psychologist.

**Q.** And where do you work, sir?

**A.** I work in Connecticut. I work for an agency called the Connection, Incorporated.

**Q.** If a person were to be released to federal supervised release in Connecticut and as a condition of their supervised release they had to attend sex offender treatment, what agency contracts with the state of Connecticut -- with the Federal Probation Office there for sex offender treatment for such a person?

**A.** Our agency.

**Q.** And can you just give the full name of that part of your agency?

**A.** The Connection, Incorporated is a large organization that has forty some different programs. The program that I work for is called the Center for the Treatment of Problem Sexual Behavior. That's the specific program that would contract or does contract with Probation.

**Q.** And can I just take a step back and ask you a little bit about who you are.

What is your educational background?

**A.** Well, I'm a licensed psychologist. I worked with, in the sexual perpetration field for over twenty years. I've worked really the gambit of preadolescent, juvenile, adult, done evaluations, treatment, and I do polygraph examinations also.

In terms of specific jobs, the last few jobs I was the assistant clinical director down at the Massachusetts Treatment Center for a few years. And I basically oversaw the prison component. They had the civil commitment and the prison component and I oversaw the prison component of that for treatment services.

**Q.** Excuse me. When you say you oversaw the treatment services at the Mass. -- this is the Bridgewater Treatment Center for sexually dangerous persons?

**A.** Yes.

**Q.** And what exactly were your duties there?

**A.** Mostly I did two things. I directly supervised -- there were different phases. I directly supervised two of the phases and then I oversaw the administrative part of the entire prison part of it. So meetings with the Department of Corrections, policies, procedures, those types of things.

**Q.** And in that job were you involved yourself in providing

therapy to individuals?

**A.** Yes. Pretty much I've always had some clinical function all along.

**Q.** And when you say "all along," how many years have you spent providing sex offender treatment to people?

**A.** Over twenty.

**Q.** And other than the time at the Mass. Treatment Center, what other types of work have you done?

**A.** Well, I worked at the Connection, Incorporated. I'm actually in my second stint there. So I think it's a little over five years cumulatively. And I have done private practice.

When I was originally at the Connection, Incorporated I oversaw their juvenile program which is a statewide outpatient evaluation and treatment program. For a year and a half I was doing private practice where I was doing mostly evaluations, some treatment but mostly evaluations.

I worked, going backwards now, I used to work on the -- I'm a West Coast guy so I was working in Oregon for several years and I worked in a private practice agency, facilitating the groups primarily. Also doing plethysmographs and evaluations.

**Q.** And when you say "plethysmographs," what type of test is that?

**A.** A plethysmograph is a sexual arousal testing. It's not used out in this area very much anymore. In fact, it's not really common anymore for some -- there is a variety of reasons it's not used as much. It's used still quite a bit in Canada but it's not used as much here.

But basically it's, you're showing audio and video stimulus and you're measuring arousal levels.

**Q.** And can you just explain briefly to Judge Tauro what you do you now at the center where you work now?

**A.** There's a couple of things that I do right now. My hands-on function right now is oversee the agency which is essentially state probation. It's called Court Support Services Division. What they do, they have developed a new program to do polygraphs on all of the sexual offenders so I am overseeing that program which is just getting started. So we're doing, we're going to be doing about 1100 -- no, about 2,000 exams a year, polygraphs, so I'm developing and overseeing that program right now.

Then the other function I've always had while at the Connection or at the Center For Treatment of Problem Sexual Behaviors specifically is part of their management so overseeing, you know, a few years ago we developed a treatment curriculum or identified one so I was part of that committee doing policies and procedures, staff supervision, that type of thing.

**Q.** And I ask you to look at your resume that's in front of you. Is you that your resume?

**A.** Yes.

**MS. KELLEY:** Your Honor, I'd like to move that Dr. Wallace's resume go into evidence.

**THE COURT:** Any objection?

**MS. STACEY:** Your Honor, I do object. And that, again, I'm renewing the objection to this witness's testimony and that he wasn't disclosed. And his testimony is entirely speculative because he doesn't know Mr. Carta and Mr. Carta has never treated with him. So he's testified to his background. I don't see any need for the rest of it to come in.

**THE COURT:** What is the --

**MS. KELLEY:** I'm not asking him to be qualified as an expert. I just --

**THE COURT:** Why didn't you put him on your list?

**MS. KELLEY:** Well, he is on the witness list. I did not -- we had another, the director of the center on our witness list. His father became critically ill.

**THE COURT:** Is this the one where you moved to substitute?

**MS. KELLEY:** Yes, I moved to substitute Dr. Wallace who is another administrator there.

**MS. STACEY:** He was disclosed after the discovery

ended, Your Honor.

**THE COURT:** All right. That is okay. I will let him testify. Go ahead. Yes, that comes in.

**MS. KELLEY:** Thank you. I'll mark this later. Thank you.

**(Defendant's Exhibit No. 11A received in evidence.)**

BY MS. KELLEY

**Q.** Okay. I'm going to ask you to look at some materials that are there in the binder in front of you. Do you recognize those?

**THE COURT:** Just to orient me, where does he plug in? Is this -- let me tell you what my question is so you know what I am pondering.

If I decide that the government has proved its case, as I understand it, the respondent would be put in custody of some state agency; is that right?

**MS. KELLEY:** No, sir.

**THE COURT:** Is this the fellow that is going to be in charge of that? Or does he stay a federal prisoner?

**MS. KELLEY:** Well, it is very interesting that you raise this question. If you commit --

**THE COURT:** I like to be interesting. Go ahead.

(Laughter.)

**MS. KELLEY:** If you commit Mr. Carta, no one knows what will happen to him because as has been litigated

extensively before Judge Wolf, the government has no plan. He will be the first person in the United States committed under this law. And the Treatment Center down at Butner, which is a Federal Treatment Center, is gone. No one will seek treatment now that this law is in place, they'd have to be a fool.

They have reopened some kind of program, an SOTP program at Fort Devens that is some different model I think than they had at Butner.

But if Your Honor is interested in what is going to happen to people who get committed, I just would like to echo that interest.

**MS. BOAL:** Your Honor, that's a completely misleading statement as to what happened in front of Judge Wolf.

**THE COURT:** Well, I am certainly going to want to know.

**MS. BOAL:** Right, I understand, Your Honor. But pursuant to 4248(d), if the Court commits the person, the person goes to the custody of the Attorney General.

The plan of the Bureau of Prisons right now -- and we put a document to this effect in front of Judge Wolf -- is to go to, North Carolina. They have developed a separate pod or part of the community there to handle people that are committed under 4248.

There is also a provision that the Attorney General shall try to have the state assume responsibility. If the state can't assume responsibility, then the Attorney General has the custody of the person.

**MS. KELLEY:** I would just like to say in the context of 4246 commitments it's my understanding states never assume custody of these people.

**MS. BOAL:** That's not correct. Judge Saris has a person that was released to the state in a case in front of her.

**THE COURT:** All right. Well, let's keep going with him.

**MS. KELLEY:** Well, if I could just explain where he does fit in because --

**THE COURT:** Go ahead.

**MS. KELLEY:** -- this is the program that is in place and waiting for Mr. Carta if you release him. And not only would I like to proffer it to Your Honor --

**THE COURT:** In other words, if I release him as opposed to order him held?

**MS. KELLEY:** Right. If you find that he is not sexually dangerous under 4248 and discharge him, this is where he will go for treatment. Because he has three years of supervised release, a condition of it is that he must attend sex offender treatment. And Dr. Wallace is a

representative of the organization that will provide that treatment. They can track the federal probation.

**THE COURT:** He is in Connecticut?

**MS. KELLEY:** He is in Connecticut. And the reason, that's where Mr. Carta is from. That's where he was going to be released to when he was taken to and moved again. He was I think two weeks from his release date to Connecticut and had plans in place to go there. That's where his family is from. That's where he is going to go.

And so we also have a probation officer here to talk about the type of supervision they provide and what conditions he would be living under. It is relevant not only because I am sure Your Honor would like to know what happens to this guy if I release him but it's also highly relevant to the risk assessment because, as Dr. Bard said yesterday, you don't just say is he dangerous now sitting here in this room. You say is he dangerous if released. That's what the statute says.

And in order to assess that you have to look at the conditions and restrictions that he will be living under. Because there is very good information that people who are strictly supervised do not reoffend at the same rate that people who are just walking the street do.

And I think you will hear both from Dr. Wallace and from Paul Collette, the sex offender specialist in the New

Haven, Connecticut office, that they have an unbelievably tight --

**MS. BOAL:** Objection, Your Honor. If we are going to have testimony, let's have the testimony and not put it in through counsel.

**THE COURT:** Well, I take it this is in the form of an amended opening statement. I will hear it anyway. It gives me some guidance. No matter how I decide the case, you want me to at least understand what the issues are. So I appreciate the help.

All right. Go ahead.

BY MS. KELLEY

**Q.** Dr. Wallace, you have some materials there in front of you?

**A.** Yes.

**Q.** And do you recognize those?

**A.** Yes.

**Q.** And what are those?

**A.** The first document I am looking at is the treatment agreement from our agency.

**Q.** Is that entire packet something that you sent to me from your agency?

**A.** Yes.

**Q.** And do those documents kind of explain the treatment philosophy and go through the various stages of treatment

with your agency?

**A.** Yes, those are some of the documents, yes.

**MS. KELLEY:** Okay. I'd like to move that both of these documents be admitted into evidence.

**MS. STACEY:** Objection, Your Honor. He hasn't testified to any of them. It's full of hearsay --

**THE COURT:** Well, he has identified them as documents belonging to his agency so I will let them in.

**THE CLERK:** Do they have a number, please?

**MS. KELLEY:** This is in our book as Exhibit 11.

**THE CLERK:** And the resume, please? What number was that?

**MS. KELLEY:** That would be 11A.

**(Defendant's Exhibit No. 11 received in evidence.)**

BY MS. KELLEY

**Q.** So could you just briefly explain to His Honor what does your program -- well, first of all, how big is your program? How many participants are there in the Sex Offender Treatment Program?

**A.** We have eleven --

**THE COURT:** You are talking about what if he gets released?

**MS. KELLEY:** Yes, sir, this is where --

**THE COURT:** That is where he is focusing, all right.

**MR. EURBGS:** He will receive treatment --

**THE COURT:** As opposed to the Butner program that was referenced by counsel here?

**MS. KELLEY:** Yes, where Mr. Carta would be the sole participant if you sent him there.

**THE COURT:** Unless Judge Wolf does the same thing.

**MS. BOAL:** And Judge Saris has already made a preliminary finding that Charles Peavy is a sexually dangerous person and he's actually now at Butner being evaluated for a 4246 but he has been moved to Butner.

**THE COURT:** Okay. Go ahead.

BY MS. KELLEY

**Q.** So could you just explain to Judge Tauro what -- well, first of all, how many people are in your program?

**A.** We have approximately 1100 clients listed on our database. Of that it fluctuates at times because people will be in violation, things like that, so we usually are actively treating and evaluating between 900 and 950.

**Q.** And this is statewide?

**A.** This is statewide. Some of them are incarcerated in the evaluation process. The vast majority of them are outpatient treatment.

**Q.** And what -- can you just tell Judge Tauro what is the overall type of treatment? What do you call this type of treatment?

**A.** The theoretical model is what is the standard which is cognitive behavioral treatment with specific interventions to address what they call dynamic and static risk factors.

A static risk factor would be something that doesn't change like number of victims, age, those types of things.

A dynamic risk factor would be things that are more changeable, things like alcohol problems, pornography use, things like that.

And most of our clinical interventions will relate to the dynamic risk factors.

**Q.** And what does -- when a person comes in to your program, what do they actually do when they first get there?

**A.** The first step is they do an intake evaluation. That is typically two to four sessions where we get background information, get collateral information, and we will do an initial risk assessment using the most standard risk protocols out there.

Then if they were accepted into treatment, then they are moved into what we call phase one. Phase one basically has two functions. One is to provide the client with psycho educational information, basically information they need to know about the fundamentals of sexual offending like risk factors and how to deal with those.

The other thing that we were doing is we're

appraising their amenability to treatment. Like, for example, if somebody in a group setting is resistive or denying their crime, then we are going to keep them in phase one until we resolve that issue one way or the other.

Once, if they -- for some clients they'll stop at phase one. For example, if we have a statutory case like a 17-year old with a 15- or 14-year old, then -- and there is not a lot of other dynamic risk factors, they may be done in treatment at that point. But for the vast majority of the clients, they then go on to what's called phase two which is where they deal with, we have a treatment curriculum, an empirically-based treatment curriculum, actually the only empirically-based treatment curriculum based out of Canada, that they will go through that.

**Q.** Can I just ask you, because we've heard his name at the trial, is this a treatment curriculum that has been studied and validated by Carl Hanson?

**A.** Not validated by Carl Hanson specifically. It uses his material. It uses his studies to develop the curriculum, as part it.

The other part of it is that there, like there are some, there are some interventions in there and what the Canadians basically did is they only used interventions that had some empirical basis for them.

**Q.** And this second phase of treatment how long would you

say typically that lasts?

**A.** Well, at some level it will always depend on the client. They have to meet the competency. They have to meet all of the goals but they also have to demonstrate that they are behaving safely and healthily in the community.

I would say typically you're talking two to three years in that phase. Some can go somewhat shorter, some can take longer. And if they are at a higher risk, they would almost certainly take longer.

**Q.** And does the person who is in treatment with you agree to any type of restrictions as part of the treatment program?

**A.** Yes. They have two levels of restrictions really. One is whatever the probation restrictions are. And then also in terms of our treatment agreement, whatever those conditions are. And essentially the client is going to have to adhere to whatever the most restrictive manners are from both the probation and the treatment provider.

**Q.** So, in other words, if someone had probation conditions, if someone has supervised release conditions that are not as restrictive as your conditions, they have to abide by your conditions?

**A.** If they want us to provide the treatment, yes.

**Q.** Now, I'm going to ask you to turn in that packet to page 17 of your fax.

**A.** Okay.

**Q.** And just ask you, obviously this says "Treatment Agreement" at the top.

**A.** Yes.

**MS. KELLEY:** Do you have a picture, Your Honor?

**THE COURT:** I don't seem to have one here.

(Pause in proceedings.)

**MS. KELLEY:** You are the only one that matters so.

(Laughter.)

(Pause in proceedings.)

**THE CLERK:** These are working over here (indicating).

(Pause in proceedings.)

**MS. KELLEY:** We do have the binder up there with these pages in it.

**THE COURT:** I guess, you know, we spent about 400 million dollars for this courtroom so.

(Laughter.)

**THE COURT:** I will just go sit in the jury box. I will go over here.

**THE CLERK:** We're the only two that don't have it working.

**THE COURT:** All right. Go ahead. Here, I will sit here.

**MS. KELLEY:** Is that monitor properly focused? Can

you see the writing?

**THE COURT:** It is a little blurry.

That is fine now.

**MS. KELLEY:** There is a way you can focus it.

BY MS. KELLEY

**Q.** So I am showing you this document entitled "Treatment Agreement." Do you see that?

**A.** Yes.

**Q.** And is this something that people need to go over and sign?

**A.** Every client that enters into our -- they're not accepted into our treatment program until they've signed the Treatment Agreement.

**Q.** And I'm just going to go to the second page of that Treatment Agreement, No. 11.

**A.** Yes.

**Q.** And this says that you --

(Whereupon, the Court and the Clerk conferred.)

**THE COURT:** Go ahead.

BY MS. KELLEY

**Q.** This No. 11 says the person agrees to submit to a polygraph?

**A.** Yes -- well, yes. There are multiple polygraphs that each client will take but they have to agree to the process of taking polygraphs, yes.

**Q.** And can you just explain to the judge during the treatment program what are the multiple polygraphs that someone has to take?

**A.** The standard process -- and this can be modified by the probation officer or the clinicians. The standard process is that in the first -- if a person is not denying their crime of conviction, in the first six months they will take most likely a sexual history polygraph and they have to pass that. They have to disclose all of their past sexual behaviors including any potential sexual crimes. We don't ask them about specific names of victims because we don't want to get at a point of further litigation. What we do is we ask for the dynamics of victims.

If assuming they pass the sexual history in six months, then they are moved into every six months taking what's called a maintenance exam. And that is an exam which checks the compliance of their conditions on treatment and probation.

**Q.** So you have this initial polygraph exam where they disclose their, basically their offending history; right?

**A.** Yes, known and unknown.

**Q.** And then you have these exams every six months where you check to see are they really compliant; right?

**A.** Correct.

**Q.** And then if someone needed a poly, another polygraph,

would you be able to give them those?

**A.** The probation, because this is contracted, the probation officer or the clinician can request a polygraph of the client at any time they want. So if they feel like there's an issue at hand and they're concerned, we can do it within 24 hours.

That's not common but it's their right to have that. So if they seek it for whatever reason, they can do that.

**Q.** Now, also part of this agreement with you is that, No. 14, well, No. 13 is they can't leave the state without your permission; correct?

**A.** Permission from both the treatment provider and the supervising agent.

**Q.** And then there are also restrictions such as you have to approve their residence?

**A.** Correct.

**Q.** And that you can restrict the type of work they do and the hours they work?

**A.** We can and we often do.

**Q.** And you -- also they have to contract with you not to go to any porn stores or video stores that sell pornography, et cetera; correct?

**A.** That's a standard, yes. They're not allowed to view any type of unapproved nudity.

**Q.** Now, looking at page 19 of those materials -- and I won't go through every single one of these -- but what are these, what is this form used for?

**A.** Well, this is basically, I wouldn't say an addendum but basically the first 18 of these are standard. Everybody that enters into treatment has these conditions.

After that what they are is, after we have done an intake evaluation and gotten the collateral information, talked to the supervising officer, met with the client, then we form additional restrictions that may be out there.

So if, for example, somebody has a problem with Internet things, we will restrict computer access. Because you're going to have as many clients as we do, there will be different conditions for different clients.

**Q.** And you tailor the conditions to their specific triggers and things that are going to be specific to their offending; correct?

**A.** To their specific risk factors, yes.

**Q.** And so, for example, if you had someone who was interested in teenagers, you would restrict things like, that are listed here such as using certain parks or buildings where perhaps there was a high concentration of teens?

**A.** Yes, malls, movie theaters, all of those types of things, yes.

**Q.** And they could perhaps even be restricted from going to public restaurants?

**A.** Yes, particularly they're not allowed to go to fast food restaurants because of play areas. And so, yes, that's, for most guys that's a restriction.

**Q.** And you even have restrictions concerning whether they can own certain types of clothing or toys or any type of items --

**A.** Right.

**Q.** -- that might be somehow connected with their specific offending pattern?

**A.** Correct.

**Q.** And also there are restrictions concerning going to sex offender, I mean, going to substance abuse treatment; right?

**A.** Sometimes it's mandated, if that's what you're asking.

**Q.** And so a condition of your program is that they attend their substance abuse treatment; correct?

**A.** If they have other treatment needs that we don't provide and there are active needs, yes, they're required to be part of that, including mental health and psychiatric.

**Q.** Now, I just want to go over, if you look at pages 21 and 22, your treatment goals. And if you look -- this is a page called, "Treatment Goals and Discharge Criteria." If you look at the bottom of that page No. one, treatment goal one. Can you just explain what that is?

**A.** Basically the client has six months, the first six months of treatment to accept responsibility at a level that would be approved by the clinicians for their specific convicted crime.

**Q.** And --

**A.** Or crimes.

**Q.** And this is where you test them to see if they're minimizing or denying anything?

**A.** What happens is we put them in for the first three months and let them be in a group setting where a lot of times we can work down the denial at that point.

At around three to four months they will then, if they choose, they can have a polygraph on that specific offense. If they were to pass that polygraph, then we would reevaluate what we do at that point.

If they don't pass that polygraph, then they have another two to three months to again admit to the crime at a level acceptable to the clinicians or they are then terminated from treatment.

**Q.** I'm looking at the next page, page 22, treatment goal two. This is something you work with people on, No. two, identifying, be aware of risk factors that could lead to your offense. Could you just explain that?

**A.** Yes. Every client is going to have specific dynamic risk factors. This is probably one of the primary things

that we do, things like pornography use, alcohol use, intimacy deficits. So whatever those specific areas that are identified specifically, the ones that have the best empirical evidence that these are risk factors, then we have the clients identify those and start working on addressing them.

**Q.** And then treatment goal three, understand your offense behavior?

**A.** This is trying to look at the pattern behavior. This works particularly well with adults. You want to see what kind of pattern, kind of how the puzzle fits together. It's based mostly on what they call a pathways model which is what is the direction, how do people get from having some problems in their life to the point where they would sexually offend.

**Q.** And then No. 4, prosocial skills and activities?

**A.** That's basically once you know what your risk factors are and your patterns are, what pattern, how are you going to address those in ways, how you have -- you want to do it in two ways.

One, you want to know how to minimize the risk; but the other part of it is that you want to have a client developing a healthy lifestyle so that they are doing positive things.

So it's not just, you know, if I had an alcohol

problem, I don't drink, but it's also developing a support system of people who don't drink. It's doing activities that make them feel good about themselves. It's having jobs. It's about being in relationships.

So it's both trying to minimize the risk factors as well as developing prosocial behaviors.

**Q.** And in this regard are you helping the treatment participants develop a social network of acceptable, healthy lifestyle living peers?

**A.** Yes, we do a couple of things. One of the primary things we do is we have, we're in the middle of modifying it. It used to be a ten-week seminar. Now it's I think a seven- or eight-week seminar.

Essentially what we do is we are trying to encourage the clients, we expect them to have a support system.

One of the key issues for people who have sexually perpetrated is to have people who are aware of their crimes, who are aware of their risk factors, who are still supportive of them so they come -- their support system is required to come to these sessions, these seven sessions, seven weekly sessions so that they can learn about the client's specific issues as well as general sexual offending dynamics. And those people are then used as part of their support network.

**Q.** And No. 5 I think is related to that, that you've developed a positive support system. And by that you mean a social network of people who can support the person; correct?

**A.** Right. The client can't leave -- our program isn't in a way that the client can just say, okay, I've learned A, B and C, they can walk out of it. The client has to, if they're going to successfully complete the program, they have to demonstrate that they have done certain things.

One of the key things they have to demonstrate is that they have a support system that we're actively -- and when I say "we," we, the probation and the therapists are actively aware of who this system is. We know that they're aware of the crimes and we believe that these are reasonably healthy, supportive people.

**Q.** So not only do you encourage people to develop these relationships and foster this but because they have to bring the people to you, you actually can see who their social network is and kind of, you have control over who are they associating with?

**MS. STACEY:** Objection, leading.

**THE COURT:** It is but I will take it. Go ahead.

BY MS. KELLEY

**Q.** Is that a fair rendition (ph.) of what you said?

**A.** We do monitor the people that we know, who they're

interacting with, yes, and we approve or disapprove of certain people that they will interact with, yes.

**Q.** And then, last of all, present a risk reduction plan that shows that you can function basically with these five criteria there; right?

**A.** Yes, essentially. The other part of this that is important about that last goal is that where somebody starts treatment when we start treatment with somebody, let's say we're talking two to three years, they're going to start very restrictive in their life. And the reality is once they get out of treatment and once they're off probation, their life will not be as restrictive.

What we're wanting them to do in that goal is to take a realistic appraisal of how they will live their life when somebody is not supervising them. It may not be as restrictive as when we started with them but we don't want them to be at the point where they were when they were offending. So it's trying to adjust their goals for a more long-term pattern.

**Q.** Now, Doctor, normally when someone is in therapies like such as your program, everything you do there is confidential; correct?

**A.** It's not confidential -- it's confidential in that it's not going to go into the newspaper. But it is not confidential in the sense that everything that the client

says can be conveyed to whoever the supervising agency is.

We also have, in almost all of our groups, we have what's called a victim advocate. And so the victim advocate will also be allowed to have access to all of the information to that. And we have weekly meetings with the supervising officers.

**Q.** And when you're talking about the supervising officers, for someone who is on federal supervised release, you're saying you would meet every week with their probation officer?

**A.** Yes. The only reason I hesitate is I don't know the federal probation system as well. Mr. Collette would have to tell you.

I know on the state probation it's every week. I don't know exactly -- I'm sure there is a regular pattern. I'm not actively involved in the meeting with the federal probation officer so I don't know their schedule of meeting. But I would presume it's something close to that.

**Q.** Do you find that your agency is in frequent contact, even unscheduled contact with probation officers?

**A.** Yes, particularly with the state side because what happens is we are doing the groups in the probation offices. So we see them, every time we do a group, we are seeing probation officers.

**Q.** If someone in your agency had some misgivings about

someone or was having problems with someone in treatment, would they be able to contact the probation officer?

**MS. STACEY:** Objection.

**A.** Yes.

**THE COURT:** What is the objection?

**MS. STACEY:** Speculation.

**THE COURT:** No. It is overruled.

BY MS. KELLEY

**Q.** And your answer was?

**A.** Yes, we have direct -- we have both email and phone availability to all the supervising officers.

**Q.** Now, another requirement of people in your program is that they register with the sex offender registry in Connecticut, the state registry?

**A.** I don't know if it's a requirement of our program. It's a requirement of the State.

**Q.** And so the sex offenders in your program typically will also be registered in Connecticut; correct?

**A.** I think they all are.

**Q.** And that is a registry that is maintained on the computer?

**A.** Yes, it's an Internet registry, yes.

**Q.** And that is open to the public, people can go in and look at who is a sex offender?

**MS. STACEY:** Your Honor, may I ask that she stop

leading the witness. It is her witness.

**THE COURT:** In this kind of a jury-waived setting, what you are trying to do is to give me as much information as possible.

If she leads, she saves some time. And I think that is more important than being very technical.

Your objection is correct but I am just going to overrule it.

**MS. STACEY:** Thank you, Your Honor.

**A.** I'm getting old, I forgot.

**Q.** You can go online and see who the sex offenders are in Connecticut?

**A.** Yes. Now, I believe that there is legislation right now to modify our registry thing. But as it is at this moment, I believe all people identified as a sex offender in Connecticut are required to be on the Internet.

I know that there is legislation to modify to have a tier system but I'm almost sure it hasn't gone into effect yet.

**Q.** Now, if you have a client in your -- who was referred to your center who is brand-new and just released from confinement and is homeless, what do you do?

**A.** Well, it's essentially the same process with the exception of if they are in certain areas, we have a clinician who her job, her specialty is working with

homeless sexual perpetrators. And we do that because we want to make sure -- when a guy comes out of prison, he's going to have more needs. And when I say "needs," dynamic risk factors. He's not going to have a job life. He's not going to have much of a support system. So we pay extra attention to those guys because we want to get them stable as fast as possible.

So we have a clinician specifically assigned to work with them. And because she has a smaller caseload, she is able to work more directly with the supervising officer and with the clients because they're going to have more needs. They're, you know, getting jobs, getting a place to live other than a shelter, dealing with the emotional, whatever it is, having to be in a shelter. They have more needs so we have somebody specifically assigned to that.

**Q.** And in New Haven, Connecticut, is there -- what's the proximity between the shelter and your office?

**A.** Right there, next-door.

**Q.** Right next-door?

**A.** Yeah, they're pretty close.

Let me modify, there is more than one shelter though. I believe where most of the guys go -- and I'm not the person who does that -- that's a homeless shelter, but I believe the vast majority of them are real close to the probation office.

Now, there could be somebody in another shelter in the city that isn't there. Sometimes they have to bump guys around and I don't know the specifics of that. But the vast majority of times it would be very close.

**Q.** Now, finally, I just want to ask you, does your organization keep statistics on the recidivism rates of people who are in your program?

**A.** Yes, only while they're in treatment. Guys who are in, active in our program, we have a 1.7 percent recidivism rate.

Once they leave, the state doesn't let us have access to the data so we don't know what our recidivism rates are post being out of our -- when they're no longer an active client, we don't know what it is.

But for all of our 1100 guys we have about a 1.7 percent.

**Q.** Can you also just address one last point which is is there some --

**A.** What I could say, one thing I think that is so important, to know kind of the, you know, in between the line, you have to know about recidivism rates. We deal with all kinds and we have, what really actually bumps our numbers up and kind of throws us off is the exposers. We count the exposers as part of our recidivism rates.

Exposers have about a 50 percent recidivism. It's

a very compulsive act so we don't have a lot of exposure but you have to, I don't know what it is parsing that out. But when you factor the 1.7, you have to also factor in that you've got exhibitionists who are throwing our numbers off basically.

**Q.** Okay. You talked about a phenomenon in treatment you referred to as a black hole and having to do with people's motivation for treatment. Can you just explain that concept to Judge Tauro?

**A.** One of the principles that we think is important is that the clients have specific -- the reason we have specific goals and specific criteria and specific restrictions in the treatment agreement is that we want to know, we want the client to know exactly what we expect them to do and give them a pathway to get to that. We don't, we don't want them to be in a treatment program where they don't know where the end is so that they become homeless.

One of the things you don't want with a sex offender is to give up. Once they give up, the old terminology was absence violation effect, that basically once somebody gives up, it increases all their risk factors. I don't care anymore so I'll just go out and drink, I'll go out and use pornography, whatever it is. We don't want that. We want them to have very specific plans. We want them to have very specific goals. And we want them to know

that there is an end date that they have control over it. We don't give them a specific date but we give them specific goals so that they know when they have accomplished the treatment goals and when they are living a certain lifestyle and they can demonstrate that through polygraphs and other ways, they will complete it.

**MS. KELLEY:** Okay. Thank you, Your Honor. No further questions.

**CROSS-EXAMINATION**

BY MS. STACEY

**Q.** Dr. Wallace, you have been working with sex offenders for over twenty years?

**A.** I believe so, yes.

**Q.** And in your experience over twenty years in the profession, you have treated people with hebephilia; haven't you?

**A.** Hebephilia is not an actual diagnosis.

**Q.** But have you seen it as a descriptor?

**A.** I wouldn't describe it that way but there is no empirical data to that. I have seen people, we see a lot of clients who have sexually assaulted teens. It's actually probably the most common scenario that we see.

**Q.** Right. When you and I spoke on the phone on Monday evening, didn't you tell me that there was no special treatment for hebephilia?

**A.** There is no special treatment because it's not a disorder.

**Q.** And when I asked you what was hebephilia, you said an attraction to teenagers; do you recall that conversation?

**A.** If you would have a clinical term to it, when it's used from a clinical impression, the dynamics that you would be looking at is somebody who is interested in teens. There would probably be two areas that you would be focused on. One area might be that the teen doesn't have the same emotional level as an adult so the client may have emotional limitations and they're more comfortable with that. We see that a lot when we get the 18-, 19-year old boys having sex with the 14-, 15-year old girls. They feel, if they're not as socialized, they feel more comfortable.

The other part could be sexualized attraction. The only problem is all of the research essentially says that all males or males in general who are not sexual perpetrators have an equal amount of sexual attraction to a post-pubescent female as they do with an adult female because there isn't any remarkable differences. In fact, most teen females are in better physical condition.

**Q.** But you're not an expert in the field of sexual offending; are you?

**A.** Yes, I am.

**Q.** You have testified as an expert and been qualified as an

expert?

**A.** Several times.

**Q.** You don't serve on any peer review boards or journals; do you?

**A.** No.

**Q.** In fact, now, when we discussed someone who has an attraction to teenagers, you said the treatment would take about three to five years to complete; isn't that right?

**A.** I don't know that I put it that way. What I was trying to convey to you is that the typical moderate risk client in our program would take three to five years, two to three years actually.

**Q.** Okay.

**A.** We have a range, for all of our clients, it ranges from between one year and five years. There is a few very high risk guys that stay in more than five years. But we don't try to keep them longer because of the homeless (ph.) issues. So typical, two to three years would be the typical person, the higher risk a little longer.

**Q.** And you don't cure a sex offender; correct?

**A.** There is nothing to cure.

**Q.** And you, in fact, I think -- so a sex offender would come to you because they have conditions of release that are requiring you -- requiring the sex offender to be treated; right?

**A.** Correct.

**Q.** And, in fact, it's rare --

**THE COURT:** Let me go back to his remark. She asked you you don't cure sex offenders and your answer was there is nothing to cure.

**THE WITNESS:** It's a behavioral problem. This isn't a medical disorder. This is a behavioral problem. We approach it from a behavioral management level. Any behavioral problem, anger management, any of these problems can be a persistent problem. What we're trying to do is teach the clients and help the clients learn to manage the behavior over a long term recognizing that it doesn't get a cure that goes away, it's something they deal with for the rest of their life.

**Q.** And you're helping them learn how to cope with the sexual illness that they have?

**A.** Correct.

**Q.** And I think you -- so a sex offender is coming to you because there is conditions of release or something that is compelling them to treat with you; right?

**A.** Correct.

**Q.** And it is rare for a sex offender to continue to treat with you once those conditions or whatever is compelling them ends; isn't that right?

**A.** Yes, it has been my experience that regardless of risk

or age, adults, juveniles, if they not compelled to be in treatment, they are very unlikely to be there. Every once in a while you will get somebody who a family member may compel them to be there and they'll say that. But if there isn't something over their head, it's very, very rare that they would stay.

**Q.** And you went over a number of restrictions contained as part of the treatment agreement. These restrictions, they don't guarantee a person won't reoffend in the community; do they?

**A.** There is never a guarantee that anybody wouldn't offend.

**Q.** And the restrictions being there don't guarantee compliance with the treatment agreement; do they?

**A.** I didn't go over -- by the way, I guess I misunderstood. I didn't see the restrictions for the shelter. That's not what I saw when we were going over the Treatment Agreement.

**Q.** Right. And there were a number of things entitled "restrictions," No. 19, No. 20, No. 21 that --

**A.** Yes. Yes.

**Q.** And those restrictions don't guarantee that a sex offender will comply; do they?

**A.** There are no guarantees.

**Q.** In fact, it's your experience that violations of the restrictions do occur?

**A.** Certainly. With enough people at some level there is

always going to be some violations.

**Q.** And you testified that if someone is accepted into treatment, are some people not accepted into treatment?

**A.** Yes.

**Q.** And you know nothing about Mr. Carta; do you?

**A.** No, I don't.

**Q.** You don't know if he will be accepted into treatment; do you?

**A.** I do not.

**Q.** If a sex offender is unwilling to acknowledge his behavior within six months, he can be terminated from the program; isn't that correct?

**A.** He would be terminated from the program.

**Q.** And in order to stay in the program Mr. Carta would have to effectively participate in treatment; isn't that true?

**A.** That's correct.

**Q.** He would have to attend sessions?

**A.** Weekly, yes. At least weekly, once a week.

**Q.** He would have to attend the sessions on time; right?

**A.** Correct.

**Q.** He would have to pay an appropriate fee in each session, nominal or otherwise; right?

**A.** Correct.

**Q.** And he would have to complete his homework on time?

**A.** Yes.

**Q.** He would have to be active in group discussions?

**A.** Yes.

**Q.** And in your experience actually some people are not active in group discussions; isn't that true?

**A.** There is always some people who are not active, at varying levels. Sometimes it becomes a clinical problem and they're terminated. Sometimes it's something you work with. You might have somebody who is shy or somebody who is initially resistant. So there is varying degrees of participation. It's a group setting. But at some level everybody has to participate.

**Q.** And he would have to participate this way at least one time a week?

**A.** Correct.

**Q.** For three to five years, that's the medium period of time?

**A.** Two to three years, yes.

**Q.** Two to three years.

You don't know Mr. Carta; correct?

**A.** Correct.

**Q.** You've never treated Mr. Carta?

**A.** Correct.

**Q.** None of your testimony here today is specific to Mr. Carta's situation; is it?

**A.** That's correct.

**Q.** And you cannot say whether Mr. Carta will succeed in treatment; can you?

**A.** I couldn't say that about any client.

**Q.** And you can't say whether or not Mr. Carta will or won't reoffend in the future; can you?

**A.** I couldn't say that about any client.

**MS. STACEY:** Nothing further.

**THE COURT:** Okay.

**REDIRECT EXAMINATION**

BY MS. KELLEY

**Q.** So, Doctor, in your opinion hebephilia is not a valid diagnosis?

**A.** I don't mean it as opinion. If you are going to go on a diagnosis, you would reference, most likely you would reference the *Diagnostic and Statistical Manual*. It's not in there. It's, there is not good validation, partly because it's not well defined yet or ever. There is no good studies to validate it.

**Q.** So when you used the term "hebephilia," you said it's a descriptive term?

**A.** You know, I think what people will do, clinicians will do an evaluation and they'll try to come up with terminology that will help them get a grasp of what they're dealing with.

And so hebephilia has been used in the field and

different people have used it more as a descriptor to give them a sense that what they're dealing with is somebody who is interested in teen females or teens.

**Q.** But that doesn't mean it's a valid diagnosis for psychological purposes?

**A.** Right, right.

**Q.** Okay.

**MS. KELLEY:** No further questions, Your Honor.

**THE COURT:** Anything else?

**RECROSS-EXAMINATION**

BY MS. STACEY

**Q.** You're aware that the diagnosis of paraphilia not otherwise specified appears in the DSM?

**A.** Yes.

**MS. STACEY:** Nothing further, Your Honor.

**MS. KELLEY:** Thank you very much, Doctor.

**THE COURT:** You are excused.

**THE WITNESS:** Thank you.

(The witness was excused.)

(Pause in proceedings.)

**THE COURT:** Call your witness.

**MS. KELLEY:** Yes. Mr. Collette, would you like to take the stand.

**THE WITNESS:** Yes.

**PAUL COLLETTE, Sworn**

**THE CLERK:** Thank you. You may be seated.

**THE WITNESS:** Thank you.

**MS. KELLEY:** I'm going to just close this book (indicating).

(Pause in proceedings.)

**DIRECT EXAMINATION**

BY MS. KELLEY

**Q.** I'm going to open the government's exhibit book to the place where the, tab 26, at the end where the conditions of special conditions of probation are set out.

**A.** Okay.

**THE COURT:** I missed the witness's name.

BY MS. KELLEY

**Q.** Could you state your name, sir.

**A.** Yes, ma'am. My name is Paul Collette.

**Q.** And what is your job?

**A.** I'm a senior United States Probation Officer for the District of Connecticut.

**Q.** And do you have a specialization in that office?

**A.** Yes, I'm the sex offender specialist.

**Q.** Let me just ask you a little bit about your background.

How long have you been a federal probation officer?

**A.** Approximately ten years.

**Q.** And where have you been during that time?

**A.** I started my career in the Southern District of New

York, which is Manhattan. After approximately three and a half, four years I moved to transfer to the Southern District of Texas, one year at Corpus Christi, four years in Houston, Texas. Then transferred to the District of Connecticut where I have been for the past two, two and a half years.

**Q.** And prior to being a federal probation officer, what kind of work did you do?

**A.** I was a New York City probation officer for approximately four years. Prior to that I was a clinical case manager at Bellevue Hospital in New York City which is a psychiatric hospital.

Prior to that I was in college.

**Q.** So as the sex offender specialist in the office, I assume you are in New Haven?

**A.** Yes, my office is in New Haven. However, I am -- the whole state of Connecticut is pretty much my office.

**Q.** And what kind of specialized training have you received in the supervision of sex offenders?

**A.** Well, going back to my first job working out of college was in New York City at Bellevue Hospital. I was working with the mentally ill population, homeless, psychiatric mentally ill, drug addicted population. We had a lot of sex offenders in that population, working with them, on-the-job training, conferences.

After that I went to work for the New York City Department of Probation where I worked in the family court unit for several years. I then transferred to the warrant division where we executed warrants and several of our offenders there were high risk sex offenders. We also had them on EM. We did do supervision.

After that when I started working for the federal government, a lot of it was on-the-job training, attending conferences, hundreds and hundreds of hours of training.

**Q.** Does every state or district now of U.S. Probation have a sex offender specialist?

**A.** No, no. We would like to but, no. It depends on the size of the district.

**Q.** And so you're the first one in Connecticut?

**A.** Yes.

**Q.** So this is a relatively new development that they designate one person to be the specialist in this area?

**A.** Within the federal probation system a sex offender specialist is relatively new. I would say within the past two years that title has sort of been coming aboard in most districts, large districts.

**Q.** And is there, within the federal probation system there is a kind of new emphasis on managing these people in a specialized way?

**A.** Correct.

**Q.** And what kind of difference is there in your supervision of a sex offender as opposed to a regular supervised release client?

**A.** It's a good question. With our sex offenders we always assume that they're high risk regardless of the actual type of offenses that they've committed. For example, downloading child pornography versus another offender who has committed a hands-on offense such as with a child. We always treat them the same equally. And we always assume that at some point down the road they may or may not -- they may reoffend. Statistically they may.

So we always start off intensely supervising all the offenders and put them in outpatient treatment, non-traditional field hours, office visits, things that we typically don't do with our general offenders because of the amount of risk involved to the general public.

**Q.** So the public safety factor makes you much more vigilant toward the supervisees?

**A.** Yes.

**Q.** And if someone were to be released to New Haven, would you personally be the one in charge of supervising them?

**A.** Generally speaking any sex offenders released to our district I'm going to supervise them. We have several offices: New Haven, Hartford, Bridgeport and Waterbury. We have four offices in Connecticut.

**Q.** And if you needed assistance in monitoring somebody who you thought needed even more attention, would you be able to pull out the resources to do that?

**A.** We have a team based approach for a lot of our offenders. So if I need to, I'll always call upon my fellow officers and they'll always be there for me in a pinch.

**Q.** Now, can you just take a look at -- this is Government Exhibit 26. It's a multipage exhibit. It's at the tend of the exhibit. And can you, do you recognize that?

**A.** I'm looking at a judgment in a criminal case.

**Q.** And this is Judge Dominic, I can't --

**A.** Squatrito.

**Q.** Squatrito. And are you familiar with him?

**A.** Actually I have spoken with him many times on the phone. I have never had the honor of being in his courtroom.

**Q.** So he is still there?

**A.** He's still there.

**Q.** Okay. And he was the judge who sentenced Mr. Carta; correct?

**A.** He was.

**Q.** And he gave Mr. Carta all the standard conditions obviously?

**A.** Yes.

**Q.** And then he also set out some very specialized conditions given the nature of the case; right?

**A.** Correct.

**Q.** And can you just look at those and explain them briefly? You don't have to read them word for word, just explain what they mean in terms of actual supervision of Mr. Carta.

**A.** Well, for Mr. Carta, and looking at the conditions, typically these are conditions that we use in our district for the supervision of sex offenders:

Computer monitoring; search and seizure; the offender is restricted from going to places where children me be. For example, public malls, Chuckie Cheeses, you know, playgrounds, schools, places like that that our offenders are directed not to go to.

He's also to register as a sex offender.

**Q.** And when you say he's to register as a sex offender, the state of Connecticut has a sex offender registry law?

**A.** Yes.

**MS. KELLEY:** Your Honor, at this time, anyone could look it up, but we have attached in our exhibit book No. 12, the Sex Offender Registry Statute. I'd like to move that that go into evidence.

**MS. BOAL:** I think it is appropriate for the Court to take judicial notice rather than have the law put into evidence.

**THE COURT:** Yes, I will take judicial notice of it. You can argue it.

**MS. KELLEY:** Okay.

BY MS. KELLEY

**Q.** And the Connecticut Sex Offender Registry is a state requirement; right?

**A.** Correct.

**Q.** And you also kind of make sure everyone knows what they have to do; right?

**A.** Yes.

**Q.** And they have to go to Middletown, Connecticut?

**A.** The State Police Headquarters is located in Middletown, Connecticut.

**Q.** And what do they do there?

**A.** Upon release they have 72 hours to report to State Police Headquarters and register as a sex offender. Once -- I'm sorry.

**Q.** You go on.

**A.** Once they go there, they're required to provide a DNA sample, photographs, addresses. Usually they will also provide a copy of their judgment. If not, I'll send them a copy of their judgment just so they have it on file. And then at that point they report to my office where we go over the conditions.

**Q.** And so the State Police will know exactly who Mr. Carta is?

**A.** Correct.

**Q.** And they have his photograph?
**A.** Correct.
**Q.** And if he ever changes his appearance he is required to go and get rephotographed?
**A.** Oh, yes.
**Q.** And periodically he has to go and confirm his information with the people in Middletown; correct?
**A.** Yes.
**Q.** And obviously failure to register is a crime in Connecticut; right?
**A.** It is.
**Q.** Now, with regard to the conditions before you, Mr. Carta in particular is required to attend sex offender treatment; right?
**A.** Correct.
**Q.** And where would he receive that treatment?
**A.** We contract out with an agency called Connections Special Services. There are sex offender, actually they work exclusively with sex offenders in the State of Connecticut. They have several locations throughout the State of Connecticut. So if an offender, for example, lives in Danbury, Connecticut, they can go to the nearest office there for their treatment.

If, for example, Mr. Carta were to be released to Hartford, they have a treatment center located in state

parole, the state parole building where he would be required to go for his treatment. But basically they have satellite offices all over Connecticut.

**Q.** And in New Haven, if a person who is released comes to New Haven under your watch and they are initially homeless, where is the homeless shelter they would go vis-a-vis the Sex Offender Treatment Program?

**A.** Well, in New Haven we have a homeless men's shelter. It's, I can't give you the exact address but it's within walking distance of the federal probation building.

In Hartford there is two homeless men's shelters and they're both in walking distance of each other. They're also in walking distance of the sex offender treatment center that he would be going to if he were to reside in Hartford, for example.

**Q.** If someone were to be released from custody, they're a sex offender and they come let's say to New Haven and report to you, what kind of supervision do you provide them with initially at the time that they're homeless and just getting settled?

**A.** Well, with our homeless offenders we really try to discourage them being homeless. But we understand that we do have homeless sex offenders out there. We work closely with the State Police. They have a state trooper whose job is exclusively to work with homeless sex offenders.

And what they do in conjunction with us is we do unannounced visits. We're in touch with the case managers in the homeless shelters. We also do non-traditional hours showing up in the evening when they check in and get their bed.

He would be required, as all my offenders, to report to my office a minimum of once a month. And that's just to the office. That's not counting how many times I go out in the field and check up on them unannounced.

But, for example, Mr. Carta, I would need to sit down with him, look at his conditions, his overall -- judge his risk level, especially in terms of what other paperwork I can get from the Bureau of Prisons, for example. And then we'll come up with some team based approach between myself and other officers in the State Police.

**Q.** So if he went and registered at the State Police and didn't have a place immediately to live, the State Police would be on that as well; right?

**A.** Yes, they would.

**Q.** Now, are there new technologies or new conditions that were not available in 2002 when Mr. Carta was sentenced that might be utilized today to supervise a sex offender who is released?

**A.** Well, just glancing at Mr. Carta's conditions, I don't see anything as far as GPS monitoring.

**Q.** And can you just explain to Judge Tauro what kind of GPS monitoring is available in Connecticut for sex offenders?

**A.** Well, in Connecticut we have passive GPS. Passive GPS is where they're hooked up to a device on their ankle or on their belt which monitors their whereabouts 24/7.

The passive GPS is different than active GPS versus we can't view where he is going in real time. So if he were to enter say an exclusion zone, which would be a school or a mall, we wouldn't know until after the fact. When he reports back to his residence, that information is then downloaded from his device on his body on to the unit which is then sent off to the server where, you know, our GPS contractor is located.

Then in the evening I could bring up the screen on my computer, wherever I am, and I could see where he's gone on the map.

But that's different than active GPS where, for example, if he were to enter an exclusion zone, I would get an immediate alert. I could bring it up on my computer and I would see exactly where he is in real time and then we could take action at that point.

**Q.** So some jurisdictions have this active GPS?

**A.** Some do, yes.

**Q.** But in your jurisdiction what happens then is at the end of the day, at the end of each day you can review precisely

where someone has been during that day?

**A.** Yes. Well, I'm going to go back a little bit. Not precisely. GPS monitoring isn't one hundred percent accurate. Especially in large urban areas. It depends upon satellites, triangulation. We can't really pinpoint where he would be to the foot, the square foot, for example.

So if he were to walk within close proximity of a school, I might get, you know, an alert that he's actually on school grounds when, in fact, he may not be. He may be passing by the school. It's not one hundred percent accurate. I just want to just say that for the record.

**Q.** But within certain bounds at the end of each day you can see at least approximately where someone has been vis-a-vis restricted areas?

**A.** Yes.

**Q.** And if someone were repeatedly say going near a school, it's repeatedly showing up, you would have a talk with them; right?

**A.** I would do more than that with him.

**Q.** Yes. Okay. That's what I was getting to. You have a zero tolerance policy; correct?

**A.** Yes.

**Q.** What does that mean?

**A.** It means I would immediately go to our court, ask for a warrant for his arrest. Then I would request that his

supervised release be revoked.

**Q.** And in these instances do you find with modifying sex offenders' supervised release to include -- let me just take one step back.

Other than the GPS monitoring, are there any other new technologies that are not listed in Mr. Carta's list?

**A.** Well, I'm looking here, I do see that there is, we do have computer monitoring as a condition also and we can do that.

The software back in 2002 was, is a lot different than the software we have now in 2009.

**Q.** And what is the software you have now like?

**A.** The software is a contractor, it's called IPPC and they're located in Philadelphia -- I'm sorry -- Pittsburgh. The software we can view in real time from any computer around the world, what he's looking at on his computer at that moment.

So if he is surfing the Internet, I can view whatever websites he's looking at. If he's engaged in any Internet chat rooms, if he's looking at his mail, I can view that. I can also control his computer remotely. I can lock it down. I can prevent him from going to certain websites. I can lock down his browser. I can prevent him from accessing the Internet from my computer.

We didn't have that technology back in 2002.

**Q.** I know you don't know a lot about Mr. Carta but assuming what you know about him is he's a sex offender, he's just finishing a child -- an offense for child pornography, would you even allow him to have a computer or use a computer?

**A.** No.

**Q.** And would you seek to modify his conditions so that that was a condition of his supervised release?

**A.** No.

**Q.** What would you do?

**A.** In terms of what?

**Q.** How would you go about refusing to allow him to use a computer?

**A.** Tell him no.

**Q.** And are there some conditions under which you might let someone like him use a computer for short periods of time?

**A.** There are.

**Q.** And how do you make arrangements for that?

**A.** Well, for example, they need to secure employment and if they're having difficulty securing employment, particularly in this economic environment, the State of Connecticut has several job placement agencies which is called ConnecticutWorks. I do have some, some of my offenders are allowed to go there, use their work stations.

Now, the work stations are set up where they're in plain view of the secretary and the office staff there. The

offender goes in, signs in for the computer for an hour, an hour and a half. They're allowed to go on to some of the job hunting websites such as Monster.com, Career Builder. They can look for jobs there. And then they can print out on their printer some job leads. But those computers are monitored visually.

And also I have good relationships with most of the locations so I can go in, I can do an audit myself and I can see where, what time he was there and, if necessary, you know, on rare occasions I can actually view his browsing history.

But for somebody like Mr. Carta, we're not even there. I'm not going to consider that.

**Q.** And when you say you're not going to consider that, you, as his supervising probation officer, you would not allow him anywhere near a computer?

**A.** No.

**Q.** Now, with regard to the treatment, the sex treatment that is mandated, do you have regular contact with the workers in that treatment program?

**A.** Yes.

**Q.** And what is that like? Can you just explain to the judge how do you communicate with them?

**A.** We have a great relationship with our contract providers. They're clinical psychologists, psychiatrists,

master level therapists. And all they do is work exclusively with that sex offender population, not only on the federal side but also on the state side.

So all offenders once when go into their group sessions and, for example, somebody like Mr. Carta, we would mandate that he go to group three times a week. We communicate with them via email, phone calls. I always give all my treatment providers, even my sex offenders, my cell phone number. They can access me 24/7 if they need to.

I also participate in the groups. I'll sit in and watch what's going on in the groups and see what's being disclosed and get a sort of better feel on a level of insight that most of our offenders have.

And, of course, if there are any red flags, such an offender disclosing something in one of the groups and I'm not there, then our treatment providers will call me up or send me an email immediately.

**Q.** Are you able to request that they perform polygraphs for you?

**A.** We do have that as a condition.

**Q.** And do you ever do that?

**A.** Yes.

**Q.** And what are the kinds of things that would trigger that request?

**A.** Well, typically, actually if it's here as a condition

and they're in sex offender treatment, our treatment providers will already take care of that for us. For example, they have full disclosure polygraph, full sexual history polygraph followed by a maintenance polygraph which is anywhere every six months to a year while they're in treatment.

**Q.** And finally one of Mr. Carta's requirements, conditions of supervised release is that he receive substance abuse treatment. And what would you do for him or with him with regard to this condition?

**A.** Well, typically what will happen is in our district substance abuse, our courts defer to the Probation Office in terms of referring them. We'll keep an eye on them. We'll do unannounced random urinalysis in the home and in the office. Based upon their history we'll, first off, somebody like Mr. Carta I would put in sex offender treatment first along with random urinalysis. Down the road I might put him in outpatient drug treatment.

One of the things I always want to caution the courts with is over supervising an offender where he won't have the opportunity to work. So putting him in sex offender, intensive sex offender treatment with drug treatment, which is a whole separate agency, separate times that he would have to go, we will take a look at that.

**Q.** And for someone who is a sex offender and also has a

history of drug abuse, what is your tolerance policy for those people who test positive?

**A.** Honestly, Counselor, it depends on the actual offender and their background, personal history characteristics. If, for example, I have a sex offender that when he uses PCP he sexually assaults women, okay, you know, we're going to deal with that immediately. You know, he is going to go into drug treatment.

I will have a zero tolerance policy for drug use. But typically we treat drug use a little differently than our sex offender conditions. We'll put them in outpatient treatment, then inpatient treatment which can be anywhere from thirty days to six months. And then if that doesn't work, we'll ask for revocation. Sex offenders, we'll have to take a look at his history.

**Q.** Okay.

**MS. KELLEY:** Thank you very much. No further questions.

**MS. BOAL:** May I proceed, Your Honor?

**THE COURT:** Yes, please.

**CROSS-EXAMINATION**

BY MS. BOAL

**Q.** Good morning, Officer Collette.

**A.** Good morning, Counselor.

**Q.** How many people do you currently supervise?

**A.** Fifty-seven.
**Q.** And approximately how many of those are non-sex offenders?
**A.** Oh, are non-sex offenders?
**Q.** Yes.
**A.** Give or take I'd say about fifteen are non-sex offenders.
**Q.** And so how many are sex offenders?
**A.** Fifteen minus fifty-seven, I'd say --
**Q.** I'm not testing your math.
**A.** I'd say about 41, 42.
**Q.** So you currently supervise approximately 41 sex offenders?
**A.** Yes, ma'am.
**Q.** And you would actually think the optimum case load would be about twenty; isn't that right?
**A.** That would be optimum.
**Q.** And that is because you would like to spend more time with each of them?
**A.** Yes.
**Q.** And you would like to have a reduced case load because in your experience sex offenders are hard wired?
**A.** Yes.
**Q.** And, in other words, based on your experience, you know that sex offenders that you have supervised never lose their

sexual desire?

**A.** I have yet to meet one that has lost his sexual desire.

**Q.** And you know that through your interaction with them?

**A.** Interaction, through conferences I've attended, through my professional experience with treatment providers.

**Q.** And, in fact, the reports that you get from the treatment center that we've discussed here today?

**A.** Correct.

**Q.** In fact, you've supervised men who have reoffended sexually while under your supervision?

**A.** I have.

**Q.** Now, Mr. Carta has a term of three years of supervised release; is that correct?

**A.** Yes, it is.

**Q.** So you can only supervise him for three years?

**A.** Correct.

**Q.** And it's possible, isn't it, that his supervised release time is running since the expiration of his federal sentence?

**A.** It's possible.

**Q.** And his federal sentence --

**MS. KELLEY:** Objection. That is a legal question and it's wrong --

**THE COURT:** I don't know -- it is a legal question. I don't know the answer to it but I don't think we have to

deal with it right now.

**MS. KELLEY:** Okay.

BY MS. BOAL

**Q.** In this case Mr. Carta's federal sentence expired in February of 2007; isn't that right?

**A.** I can't answer to that. I haven't seen his file.

**Q.** And today if Mr. Carta was convicted of the same federal offense, he would get a minimum of five years supervised release; isn't that right?

**A.** It is correct.

**Q.** And, indeed, the Sentencing Guidelines today recommend lifetime supervision for persons such as Mr. Carta?

**A.** Correct.

**Q.** Now, you spoke a little bit earlier about revocation. And if you found that someone had violated their terms of supervised release, you might petition for revocation to the court?

**A.** Yes.

**Q.** And that is often a contested proceeding; isn't it?

**A.** Oh, yes.

**Q.** And could you describe the procedure?

**A.** Well, it's similar to other districts I've worked in. But in our district this is how it would work. The defendant would be with his defense counsel at one table. I would be with the government at the other. And it would be

a mini trial. And we would present our evidence. I would testify. And the defendant would have an opportunity also to testify.

**Q.** And then ultimately the judge decides?

**A.** Correct.

**Q.** So just because you seek revocation doesn't necessarily mean that it will happen?

**A.** That's correct.

**Q.** And even if he is returned to custody, let's say his supervised release was revoked, the term of incarceration could not exceed the time left on his supervised release; isn't that right?

**A.** That's correct.

**Q.** Now, you talked about sex offender registration. That is not a lifetime registration; is it?

**A.** No, it's not.

**Q.** Indeed, in the State of Connecticut it's only for ten years?

**A.** Yes, it is.

**Q.** Now, we talked about Mr. Carta's restriction that he couldn't be in the company of children. But that's difficult to enforce; isn't it?

**A.** It's very difficult to enforce.

**Q.** And why is that?

**A.** Because I can't be with my offender 24 hours a day seven

days a week 365 days a year for three years.

**Q.** And is it especially difficult in a large metropolitan area?

**A.** It's very difficult.

**Q.** And why does it become more difficult in a metropolitan area?

**A.** Well, typically there is more opportunities for an offender to run into children on a random basis, walking down the street, walking by a store, walking by a playground, walking by a school, walking into a mall. And he may not be walking into a toy store or a kid's store but rather maybe in an adult store but he is going to have to walk by other areas where children are.

**Q.** And we talked about passive GPS which is what Connecticut currently uses --

**A.** Correct.

**Q.** -- at your probation office.

And that is not, does not equip you to deal with an imminent violation?

**A.** It does not.

**Q.** You're only able to see where they have gone after the fact?

**A.** Correct.

**Q.** Now, we talked about computer restrictions. And those restrictions are on his own computer; isn't that right?

**A.** Well, can I answer that and then add something?
**Q.** Yes.
**A.** Okay. Yes, they would be on his own computer but also, we also look at his work computer. So if he is working for a company, for example, we can install the software on the company provided he's disclosed that he's a sex offender, that he's got that, those conditions. Provided also, the company, it's a small company, if it's Fortune 500 or a Fortune 100 company, the server could be located in Japan and it would be impossible for us to install that software.
**Q.** And if Mr. Carta went to a library to use the computer, you couldn't do anything about that?
**A.** No, I couldn't.
**Q.** Now, Mr. Carta was scheduled to be released to Open Hearth; is that correct?
**A.** From what I understand.
**Q.** And that's located in Hartford; isn't that right?
**A.** Correct.
**Q.** What is Open Hearth?
**A.** It's a men's shelter.
**Q.** And how long could he stay at Open Hearth during the day?
**A.** During the day he wouldn't be allowed to be in Open Hearth. He would be, for want of a better world, all of the males are kicked out about 7:30 in the morning.

**Q.** And then what happens?

**A.** They return about four o'clock, 4:30 in the afternoon for their bed.

**Q.** So if Mr. Carta doesn't have a job to go to, he doesn't have anyplace to go to between 7:30 and 4?

**A.** From what I understand he has nothing lined up.

**Q.** And the Open Hearth shelter is next to a school; isn't that right?

**A.** Yes.

**Q.** And it's across the street from an apartment building; isn't that right?

**A.** Yes, it is.

**Q.** And there are children that live in that apartment building based on your experience?

**A.** Yes, there are.

**Q.** The conditions of supervised release that Mr. Carta has do not guarantee that he will not reoffend; do they?

**A.** They do not guarantee that.

**MS. BOAL:** No further questions.

**MS. KELLEY:** Just briefly, Your Honor.

**REDIRECT EXAMINATION**

BY MS. KELLEY

**Q.** I am going to show you a document. Do you recognize that?

**MS. BOAL:** Can we have a copy of this?

(Whereupon, counsel conferred.)

**A.** Actually, to be honest, I haven't seen their brochure but I do recognize Open Hearth.

**Q.** Okay. This seems to be a brochure for the Open Hearth organization or shelter?

**A.** Yes.

**Q.** And Open Hearth no longer takes sex offenders now; do they?

**A.** To be honest, from what -- well, no, they do take sex offenders.

**Q.** They do at this time?

**A.** Well, they do take my federal offenders.

**Q.** Okay. And Open Hearth is not only a homeless shelter, it also has a transitional living component; doesn't it?

**A.** It does.

**Q.** Yes. And people who are there can work in their wood industry, they're required to do that to help pay the expenses of living there; right?

**A.** From what I understand, yes.

**Q.** And so if Mr. Carta were to have said to someone when he was first getting ready to be released that he hoped to go to Open Hearth, that would not have been a lie; would it? A person at that time who was seeking to be released could have planned to go there; correct?

**A.** Correct.

**Q.** And it's not just a homeless shelter, it also, according to the literature, has another facility there which is a transitional living facility; correct?

**A.** It does.

**Q.** Because there are some people in this world who don't have a place to go; right?

**A.** Yes, ma'am.

**Q.** But they're trying to get on their feet; right?

**A.** Correct.

**Q.** And they're looking for a job; right?

**A.** Yes.

**Q.** And they need a place to live?

**A.** Yes.

**Q.** And work; right?

**A.** Yes, ma'am.

**Q.** So they work there also? And that's not a lie; is it?

**A.** It's not a lie coming from you, ma'am.

**Q.** Thanks.

Do you have sex offenders that you've supervised who come out and are homeless?

**A.** Yes, I do.

**Q.** And they go to their treatment?

**A.** Yes.

**Q.** And they stay sober?

**A.** Yes.

**Q.** And they get a job?

**A.** Yes.

**Q.** And they've really tried to reintegrate?

**A.** Yes.

**MS. KELLEY:** Thank you.

**THE WITNESS:** You're welcome.

**THE COURT:** Anything else?

**MS. KELLEY:** I have nothing else.

**MS. BOAL:** Nothing, Your Honor.

**THE COURT:** All right. You are excused, sir. Thank you.

**THE WITNESS:** Thank you, Your Honor.

(The witness was excused.)

**THE COURT:** We are back to the cross now?

**MS. KELLEY:** Can we take just a five-minute bathroom break?

**THE COURT:** Sure.

**MS. KELLEY:** Thank you.

**THE COURT:** You know, I never think of those things. Any time you want to take a break, just raise your hand and we will all join in.

**MS. KELLEY:** Thank you, Your Honor.

**MS. BOAL:** Thank you.

(Recess.)

**THE COURT:** Sit down, everybody, please.

(Pause in proceedings.)

**MS. STACEY:** May I proceed, Your Honor?

**THE COURT:** Yes. This is the cross of Dr. Bard; right?

**MS. STACEY:** Yes.

**LEONARD BARD, Resumed**

**CROSS-EXAMINATION, (Cont'd.)**

BY MS. STACEY

**Q.** Now, Dr. Bard, yesterday we discussed hebephilia and whether it was a proper diagnosis. Do you recall that?

**A.** I do.

**Q.** And we referred to a number of articles during your testimony about hebephilia. Do you recall that?

**A.** Not very many articles actually, no.

**Q.** Studies?

**A.** No.

**Q.** Texts?

**A.** There were a couple of texts. There weren't any articles.

**Q.** You said that you kept current with the research on sexual offending; correct?

**A.** Correct.

**Q.** And one of the articles that I believe you were asked

about yesterday was a 2008 article by Ray Blanchard. Do you recall that?

**A.** Yes.

**Q.** And that article is entitled, "*Pedophilia, Hebephilia and the DSM-V.*" And it was published in 2008.

**A.** Yes.

**Q.** Are you familiar with that?

**A.** Yes, I am.

**Q.** And that's a peer reviewed article?

**A.** It is.

**Q.** And that particular study, the Blanchard 2008 study showed that hebephilia exists and is relatively common compared with other forms of erotic interest in children; didn't it?

**A.** No, it did not. That was the author's conclusion. It did not show that in the least.

**Q.** So --

**THE COURT:** You mean the article didn't show it?

**THE WITNESS:** The article, the actual data, the actual research that he conducted did not show that in the least. He leapt to that conclusion but it's not supported.

BY MS. STACEY

**Q.** So it was -- and if I might show it to you on the screen, it's highlighted.

The Blanchard article, The present study showed

that hebephilia exists and, incidentally, that it is relatively common compared with other forms of erotic interest in children.

Isn't that what he said in his article?

**A.** That is the conclusion, the discussion section. It is not, it does not follow from the actual research that he conducted. The research is faulty on a number of different levels which I'll be happy to explain again.

**Q.** You agree that that's what the discussion of his conclusion reads in the article; correct?

**A.** That is what he wrote in his discussion. Again, it is not supported by anything.

**Q.** And in the same article he referenced a number of other studies and articles that were peer reviewed on hebephilia; didn't he?

**A.** He referenced his own research. That is the only research that he discussed, the research that is done by his laboratory in Canada from 2002 until the present time.

**MS. STACEY:** Your Honor, I am doing my best to ask yes or no questions. So I would just ask that the witness be responsive to my questions. He will have an opportunity on direct to expound.

**THE COURT:** Yes, he will, but have in mind the type of hearing that we have. I am looking for information.

**MS. STACEY:** Thank you, Your Honor.

**THE COURT:** This isn't a question of who got to the intersection first. I want to know as much as I possibly can.

**MS. STACEY:** I understand. Thank you.

**THE COURT:** So I am going to give him a little leeway. I am going to give you leeway. Everybody is doing their best to make me fully informed. Okay.

**MS. STACEY:** Yes, Your Honor. Thank you.

BY MS. STACEY

**Q.** One of the studies, you're familiar with Mr. Blanchard's 2007 study on IQ, handedness and pedophilia in adult male patients stratified by referral source. Are you familiar with that?

**A.** I have read it, yes.

**Q.** And that was peer reviewed and published in the Journal of Research and Treatment?

**A.** Journal of Research --

**Q.** Sexual Abuse, A Journal of Research and Treatment?

**A.** Oh, yes.

**Q.** And that study references hebephilia; doesn't it?

**A.** It does.

**Q.** And you're also familiar with Blanchard's 2003 study, "*Self-reported Head Injuries Before and After Age 13 in Pedophilic and Non-pedophilic Men Referred for Clinical Assessments*"?

**A.** I don't think I have actually read that article.

**Q.** He references it in --

**A.** I am aware of it though, yes.

**Q.** Okay. You're aware of it?

**A.** Yes.

**Q.** And it was published in the peer reviewed Archives of Sexual Behavior; correct?

**A.** That's the same journal as this one, yes.

**Q.** And that references hebephilia; doesn't it?

**A.** I don't know. I haven't read the article.

**Q.** And someone by the name of J. M. Cantor, Blanchard, Christensen, Dickey, Beckstead, in 2004 they published on *"Intelligence, Memory and Handedness in Pedophilia*;" do you recall that?

**A.** To be clear, that is not someone named Cantor. That's the coinvestigator on all of his research, Blanchard and Cantor. The answer is yes.

**Q.** And that group of people, that study also referenced hebephilia --

**A.** Yes.

**Q.** -- didn't it?

**A.** Yes, it did.

**Q.** And Cantor, Klassen, Dickey, Christensen, Kuben, Blak and all in 2005 in an article entitled, "*Handedness in Pedophilia and Hebephilia*" was published in the Archives of

Sexual Behavior. You're familiar with that?

**A.** Same journal, same authors, yes.

**Q.** And it references again hebephilia?

**A.** They're the only ones, yes.

**Q.** And in 2006 in a study entitled, "*Grade failure in Special Education Placement in Sexual Offender's Educational Histories*," published in the Archives of Sexual Behavior by Cantor, et al, in 2006, that also referenced hebephilia; didn't it?

**A.** I don't know that article at all. I'm sorry.

**THE COURT:** Let me ask you this:

Do you have any articles that are not, what is the --

**MS. STACEY:** Not Cantor or Blanchard?

**THE COURT:** Blanchard or Cantor that talk about hebephilia?

**MS. STACEY:** Yes, Your Honor. And this would be --

**THE COURT:** I get the impression from the witness that he is dismissive because he says this is just a one-man band --

**MS. STACEY:** Yes.

**THE COURT:** -- "touting" this disease.

**MS. STACEY:** And in addition, so that the record is completely clear about the references yesterday that I put on the record.

BY MS. STACEY

**Q.** You're familiar, there is a text called Sex Offenders written by Alfred C. Kinsey, published in 1965, the Institute for Sexual Research, that referenced hebephilia. Do you recall my asking you about that?

**A.** I do recall that you asked me about it but it's not research. And that's the problem.

**Q.** Well, it's a book that references hebephilia; correct?

**A.** It's a book that talks about it as it was postulated in the 1950s. But there is no research anywhere to support its existence except for Blanchard. That's my only point here.

**Q.** And Cantor?

**A.** Well, yes, Blanchard, et al. I apologize. But it's the same group that is published over and over again trying to justify this and they have failed.

**Q.** And Bernard C. Glueck in 1955 on, "*Final Report, Research Project for the Study and Treatment of Persons Convicted of Crimes Involving Sexual Aberrations*" in June 1952 to 1955 referenced hebephilia at page 13 of that?

**A.** And homosexuality and other things, yes. It's not research.

**Q.** And Dr. Dennis Doren in his book entitled, Evaluating Sex Offenders in 2002 listed hebephilia as a type of relevant type of paraphilia NOS; correct?

**A.** It's not research. You asked me about research. He is

just giving an opinion.

**Q.** The question I just asked you is does Dr. Doren's book Evaluating Sex Offenders list under other relevant types of paraphilia NOS, hebephilia?

**A.** It does.

**Q.** And in another article by John Money entitled, "*Paraphilia Phenomenology and Classification*," and I believe that was in 1984, are you familiar with that study?

**A.** I am familiar with John Money, yes.

**Q.** And in that study ephebophilia, the former name for hebephilia, is listed as a paraphilia; isn't it?

**A.** It's not necessarily the former name. It's people have used that to designate various things, including what is now incorrectly described as hebephilia but also sexual arousal to older adolescents.

**Q.** And that is listed as a paraphilia in this article?

**A.** It's not research.

**Q.** Okay.

**A.** Dr. Money has written books about a thousand different paraphilias. And he has served as a consultant for *Penthouse Magazine*. He is not taken seriously by anybody.

**Q.** In your opinion?

**A.** In anyone's opinion.

**Q.** You can't speak to what other people think.

**A.** And it's not generally accepted. I can say that. John

Money is nowhere --

**Q.** Dr. Bard --

**A.** -- if he was so important, he would be referenced by Blanchard. But he is not because even Blanchard is embarrassed by him.

**Q.** Dr. Bard --

**MS. STACEY:** I move to strike Blanchard --

**THE COURT:** You know, I was reading. I wasn't listening, so with all due respect to the doctor.

Now, I am just trying to focus. I have trouble with that word too. I keep thinking "hemophilia" but that is not it. It is "hebephilia."

**MS. STACEY:** Hebephilia.

**THE COURT:** Hebephilia. This becomes significant because one of the things that you have to show is that Mr. Carta currently suffers from serious mental illness, abnormality or disorder.

**MS. STACEY:** Yes.

**THE COURT:** So you are trying to say that this hebephilia is that disorder.

**MS. STACEY:** It's a descriptor of a disorder called paraphilia NOS. Paraphilia NOS --

**THE COURT:** And you say that it is not an illness.

**THE WITNESS:** It is not an illness. It is not a disorder. It is not an abnormality. It has never been

accepted as such.

**THE COURT:** And I take it it is part of your case to convince me by --

**MS. STACEY:** Clear and convincing.

**MR. GOLD:** Clear and convincing.

**THE COURT:** -- clear and convincing evidence that this is a serious mental illness.

**MS. STACEY:** Yes, Your Honor.

**THE COURT:** Okay.

**MS. STACEY:** And the mental illness --

**THE COURT:** I mean, everybody is doing a great job trying the case. I just want to make sure that I didn't miss any of the innings, that is all. I think that I have my arms around it. Go ahead.

**MS. STACEY:** Thank you, Your Honor.

**THE COURT:** Okay. Go ahead.

BY MS. STACEY

**Q.** You also --

**THE COURT:** And I really did hear what you had to say. I don't want you to --

**THE WITNESS:** Thank you.

**THE COURT:** I don't want to be dismissive towards you either.

Go ahead.

BY MS. STACEY

**Q.** And are you familiar with the book entitled Sex Crimes and Paraphilia by Eric W. Hickey?

**A.** No, I am not.

**Q.** Have you -- that was published in 2005. You are not familiar with it?

**A.** I am not.

**Q.** You're not aware that it contains an entire chapter on hebephilia?

**A.** I have never seen that book.

**MS. KELLEY:** If I can just object here. We provided the government with a very long list of all the articles we would be referencing in this courtroom so that this would not happen, and copies of the articles so that this would not happen where they can leave an impression with Your Honor that something is about scientific studies, et cetera, when our expert doesn't know what they're talking about and has never seen something.

**THE COURT:** He is doing a good job convincing me that he feels that whatever she is bringing up is not intellectual property. It is not a study that raises this hebephilia to the level of being a serious mental illness; is that a fair statement?

**THE WITNESS:** It is absolutely right, sir.

**THE COURT:** And he is not changing. I mean, she can go over the laundry list of articles; but if he has the

same reaction to it, that is not research.

BY MS. STACEY

**Q.** You testified earlier that -- and, I'm sorry, you said you did not, you were not familiar with the book?

**A.** I am not familiar with that book.

**Q.** Okay. And you testified earlier that you respected Dr. Barbaree?

**A.** Yes.

**Q.** And that he was a well known researcher in the fields?

**A.** Yes.

**Q.** And you are aware, aren't you, that Dr. Barbaree testified in Hawaii in the Abregana case?

**A.** No.

**Q.** Are you aware that Dr. Barbaree testified that hebephilia is quite properly diagnosed?

**A.** I haven't seen that. I don't know anything about it.

**Q.** Are you aware that in --

**THE COURT:** Now what are you referencing?

**MS. STACEY:** I'm referencing the transcript from the Abregana hearing, Your Honor.

**THE COURT:** Show it to him.

Is that in evidence? Is it going to be offered?

**MS. STACEY:** It is not in evidence, Your Honor.

**THE COURT:** Well, are you going to offer it?

**MS. STACEY:** As a public record? My copy is marked

up --

**THE COURT:** Well, it is a transcript. I mean --

**MS. STACEY:** Yes, yes. It's just my copy is marked up. I have to just offer a cleaner copy when we're done, if that's all right?

**THE COURT:** Okay.

**MR. GOLD:** Your Honor, we just request that the entire transcript from that day -- I think that's a good idea and Dr. Barbaree does discuss this at a little length. We actually included an excerpt of his testimony in one of the things that we filed.

**THE COURT:** Well, let me have it as an exhibit. We will refer to it during this doctor's testimony.

BY MS. STACEY

**Q.** So I am showing you one portion of the transcript. And the question is you have been -- the answer for Dr. Barbaree when asked about hebephilia is that he testified it's quite properly diagnosed or that the person was quite properly diagnosed as a hebephile. Do you see that?

**A.** I see that.

**Q.** And you were not aware of that testimony?

**A.** You have shown me one line in an entire transcript. I make nothing of that. I don't know what he was talking about. I don't know if the individual was the same as Mr. Carta or different than Mr. Carta. It is a meaningless

thing for me.

**Q.** The question was were you aware of the testimony?

**A.** I am not aware of anything about that. I told you that.

**Q.** Okay. Thank you.

**MS. STACEY:** Your Honor, if this is going to be admitted as an exhibit, I'd ask that we make references in rulings and findings at a later date, proposed rulings and findings rather, because he is not familiar with it.

**THE COURT:** Well, you are going to give me proposed findings reference to the transcript at the conclusion of the evidence.

But is that the only reference to hebephilia?

**MS. STACEY:** Your Honor, it goes throughout the entire transcript.

**MS. KELLEY:** Well, I do happen to know that in the judge's findings she ruled that he also testified it was not a serious disorder --

**MS. STACEY:** For that particular individual.

**MS. KELLEY:** And that was -- well, I don't know because I haven't seen this. We weren't given notice of this. We don't have a copy of this transcript.

**MS. BOAL:** Your Honor, they quoted from the transcript in their brief so there is no surprise here.

**MS. KELLEY:** If you read the actual court case, the Abregana case, the judge ruled that in that case that

hebephilia did not constitute a serious mental illness or abnormality under 4248.

**MS. STACEY:** For Mr. Abregana.

**MS. KELLEY:** And she discharged that guy. So I don't know what the upshot of all of the testimony there was.

But I object to a tiny portion of an entire transcript being read to an expert and asking him to comment on it.

**MS. STACEY:** I asked if he was aware of simply the testimony.

**THE COURT:** Well, it is of no significance he says so that is his reaction to it.

**MS. STACEY:** I mean, the issue...

BY MS. STACEY

**Q.** Now, Dr. Bard, in -- pardon me -- in discussing risk of reoffense with sex offenders, there is no such thing as no risk for reoffense; correct?

**A.** In my opinion all offenders will be at some risk always.

**Q.** And research suggests that a person who commits sex offenses both as a juvenile and as an adult, they're at increased risk to reoffend later; aren't they?

**A.** No, it says the individuals who commit offenses and are sanctioned as juveniles and they're committed as adults are.

**Q.** Okay. And that increases the risk to reoffend; correct?

**A.** If they are sanctioned and they reoffend, yes.

**Q.** And research suggests that a person who has poorly controlled sexual impulses are at an increased risk of sexual reoffense; correct?

**A.** That is a very broad statement. I'm not sure I would agree with that overall. I do know that, as I indicated yesterday, sexual self-regulation is a dynamic risk factor but I'm not sure what you're asking me.

**MS. STACEY:** If I might just have a moment, Your Honor?

**THE COURT:** Yes.

(Pause in proceedings.)

BY MS. STACEY

**Q.** I am going to show you page 138 of your transcript.

"QUESTION: Are you aware of research that indicates people who have poorly controlled sexual impulses are at a higher risk of reoffense?

"ANSWER: Yes, that goes to the whole dynamic factors."

Didn't you testify --

**A.** That's exactly what I just said here. Exactly.

**Q.** What you testified to here, Dr. Bard, was that it was more complicated than that. You didn't testify to that at your deposition; did you?

**A.** No, you asked me a very vague question about sexual

impulses. And I refined it and talked about in terms of dynamic risk factors just right now. It's exactly the same thing as I said.

**Q.** Dr. Bard, you are aware of research that says many sex offenses go undetected; aren't you?

**A.** I am certainly aware of that.

**Q.** In fact, that's what happened in this case; right?

**A.** Yes, obviously.

**Q.** And you are aware of research that indicates that child pornography offenders who had committed a contact sexual offense, that they were most likely to reoffend again; aren't you?

**A.** I think that's the research of Seto and I recall it but I don't recall it that well.

(Whereupon, counsel conferred.)

**Q.** I'm showing you page 208 of Michael Seto and Angela Eke, *"Criminal Histories and Later Offending of Child Pornography Offenders"* in the Sexual Abuse: The Journal of Research and Treatment, Volume 17, No. 2, April 2005. "Child pornography offenders who had ever committed a contact sexual offense were the most likely to reoffend."

Did I read that correctly?

**A.** Yes, you did.

**Q.** Does that refresh your recollection about whether that study showed that?

**A.** Well, I do recall vaguely. You know, seeing one sentence does not tell me the entire thrust of the research; but it certainly does say that.

**Q.** You testified yesterday that Mr. Carta was forthcoming with you. Do you recall that?

**A.** Yes.

**Q.** And whether Mr. Carta was forthcoming was never tested in the Sex Offender Treatment Program; was it?

**A.** I don't know how you could test that other than with a polygraph.

**Q.** Right. And the polygraph happens in the fourth phase of sex offender treatment; doesn't it?

**A.** In that program, yes.

**Q.** And Mr. Carta quit the Sex Offender Treatment Program before he had to take that polygraph; didn't he?

**A.** Yes, I believe was in phase two at the time. Or phase three, I'm sorry.

**Q.** In assessing Mr. Carta's risk of reoffense, you used an adjusted actuarial approach; didn't you?

**A.** I did.

**Q.** And are you aware of the Hanson 2007 study that says using the adjusted actuarial approach actually reduces the predictive risk of accuracy?

**A.** I am aware of many different pieces of research on this issue. Hanson was the one who originally recommended the

adjusted actuarial.

I think that you're taking that out of context because nobody, not even Dr. Phenix does a totally actuarial approach. She discussed the dynamic factors here also. So I think there is nothing wrong with relying on the actuarials. I do all the time.

**Q.** Dr. Bard, are you aware that Dr. Hanson found in 2007 that you using the actuarial, adjusted actuarial approach reduced predictive accuracy?

**A.** I would have to look at that study much more closely in order to comment on it, I'm sorry.

**Q.** And there is a difference between what you and Dr. Phenix did in terms of risk assessment?

**THE COURT:** If I understand correctly, one of the problems with using the actuarial approach exclusively is that the situation never changes.

**THE WITNESS:** Exactly, Your Honor.

**THE COURT:** Five years from now he is going to have the same --

**THE WITNESS:** Right, if someone is deemed at high risk under the actuarials and someone relies only on that, he will never be anything other than that, high risk. No matter what.

**THE COURT:** Yes.

BY MS. STACEY

**Q.** You used the RRASOR to assess Mr. Carta's risk of recidivism?

**A.** I used that among other actuarials.

**Q.** And Hanson says that the RRASOR shouldn't be used anymore; correct?

**A.** Yes, that's what he says.

**Q.** And, in fact, you don't use that anymore?

**A.** I rely right now on the Static-99 only.

**Q.** And both you and Dr. Phenix used the Static-99 to score Mr. Carta; isn't that true?

**A.** Yes, it is.

**Q.** And actually you scored every element the same except for a fourth element, prior non-sexual violence; correct?

**A.** That's right.

**Q.** You gave Carta a zero on that element?

**A.** Yes, I did.

**Q.** And Dr. Phenix, she was one of the authors of the Coding Manual; isn't she?

**A.** Yes.

**Q.** And that's the Coding Manual for the Static-99?

**A.** That's right.

**Q.** And you would agree that Dr. Phenix has a certain expertise in coding; wouldn't you?

**THE COURT:** Does this revolve around the fire, setting fires?

**MS. STACEY:** Yes, Your Honor.

**THE COURT:** Okay. Go ahead.

**A.** Are you asking me to comment about her?

**Q.** Would you agree that Dr. Phenix has a certain expertise in coding as an author of the Coding Manual?

**A.** I have never seen her do a coding except in this case so I would reserve judgment on that.

**Q.** You are aware that Dr. Phenix gave Mr. Carta a one for non-violence?

**A.** I am aware of that.

**Q.** And she included the reckless burning conviction there and you did not?

**A.** That's exactly right.

**Q.** And she also actually included the risk of injury to a minor in 2001 and you did not; correct?

**A.** I saw that on her coding sheet but I don't think that she testified to that.

**Q.** So because of that Dr. Phenix scored Mr. Carta at a six; Correct?

**A.** Correct.

**Q.** And you scored Mr. Carta at a five?

**A.** Correct.

**Q.** Your score of five put Mr. Carta in the moderate to high risk category; correct?

**A.** Correct.

**Q.** And Dr. Phenix's score of six put Mr. Carta in the high risk category; correct?

**A.** Correct.

**Q.** You used dynamic factors to adjust the level of risk in your scoring; didn't you?

**A.** I did.

**Q.** And you adjusted Mr. Carta's risk downward for age; didn't you?

**A.** Yes.

**Q.** And you testified that you did that because of a 2006 article entitled, "*The Static-99 Predict Recidivism Among Older Sexual Offenders*;" is that correct?

**A.** That was one of the reasons why, yes.

**Q.** And the article said that research suggests that the Static-99's methods of accounting for an offender's age might be insufficient to capture the decline for recidivism associated with advanced age; didn't it?

**A.** Yes.

**Q.** And the average Static-99 score for the people in that sample was in the moderate to low range; wasn't it?

**A.** I believe that's been the average in all of the research.

**Q.** And Mr. Carta is in the moderate to high range; isn't he?

**A.** Yes.

**Q.** And research suggests that evaluators who use the Static-99 should consider advanced age as just one factor in an overall estimate of risk; correct?

**A.** Which is exactly what I did here, yes.

**Q.** But at least according to that article that you relied upon in the 40- to 60-age range, it is not mandatory to consider age as a mitigating factor; is it?

**A.** It's not mandatory to do anything with any of this but it's good practice if you know the research.

**Q.** And you're aware of research that says child molesters offend well into their fifties?

**A.** I am aware of research that suggests that there is less of a decline with age for child molesters than it is for rapists, yes.

**Q.** And you're aware of research that says reductions in risk as a result of age were actually significantly slower for child molesters than they were for rapists?

**A.** I believe that's what I just said.

**Q.** And you're aware of research that says that child molesters and especially those whose victims were male are at a higher risk for committing new sexual offenses?

**A.** That's already accounted for in the actuarial.

**Q.** Now, Mr. Carta committed his offense, some offenses when he was in his forties; correct?

**A.** I believe he was either 40 or 41.

**Q.** Okay. And he is still in his forties; correct?
**A.** He is.
**Q.** And men in their forties are still sexually active; aren't they?
**A.** Ment of them are, yes.
**Q.** You didn't diagnose Mr. Carta with a personality disorder; did you?
**A.** I did not.
**Q.** You testified that Mr. Carta clearly met the criteria for antisocial personality disorder but in the past?
**A.** Yes.
**Q.** And you testified that his history, he clearly met borderline personality disorder but again in the past?
**A.** No, I did not say that.
**Q.** And you don't diagnose him with the personality disorder today based on his behavior since his arrest in 2001?
**A.** No, I don't diagnose him with antisocial personality disorder because the definition of a personality disorder means that it is an ongoing lifelong kind of thing. And I don't see the same pattern on behavior in the past five to ten years that we saw earlier in his life.
**Q.** You would expect someone with this personality disorder to challenge authority?
**A.** More than just challenge authority. You would expect him to act in ways that would seek to disregard them and put

his own interests first.
**Q.** You would expect someone with these personality disorders to make threats?
**A.** It's possible.
**Q.** And, in fact, the records show that Mr. Carta threatened to kill his mother in 2001; didn't he?
**A.** I actually have heard that before when I was watching but I don't recall seeing that anywhere.
**Q.** I am going to show you and ask you to look at paragraph 68. Do you recognize this document as one of the documents you reviewed? It's Bates stamp 0095.
**A.** It looks like the presentencing evaluation.
**Q.** And so in that document did you review, looking at paragraph 68, "Now all he sees is him yelling and screaming, especially his parents, to who he says he wrote a letter while in state custody in 2001 indicating that when he was released he would find his mother and kill her."
**A.** I see that, yes.
**Q.** And you're aware that while he was in custody in 2001 he also threatened to kill his daughter?
**A.** Again, I have a vague memory of that. If you tell me it's there, I certainly accept that.
**Q.** He threatened to kill his daughter and her boyfriend when he was released; didn't he?
**A.** Again, I don't have a specific memory of that. But if

you are telling me it is in the file, I certainly accept that.

**Q.** And after 2001 Mr. Carta actually sought revenge against another inmate in the Sex Offender Treatment Program; didn't he?

**A.** I know that there was a note about that. Mr. Carta's version of events is a little bit different.

**Q.** And there was -- and there was notes that he became enraged in the Sex Offender Treatment Program; weren't there?

**A.** Again, I don't recall every piece of paper I have seen. I know that he was cited for being angry at times, yes.

**Q.** And you know that incident after 2001 when Mr. Carta threatened to throw hot oil on another inmate; do you recall that?

**A.** I remember that, yes.

**Q.** And he was disciplined by the Bureau of Prisons for that?

**A.** I believe he was.

**Q.** And he lost 27 days good conduct time?

**A.** Again, I don't remember every detail; but if you are saying that, I certainly accept that.

**Q.** And, in fact, this behavior continued at Devens; didn't it?

**A.** I don't know what you mean, I'm sorry.

**Q.** Well, at Devens didn't Mr. Carta steal property and was disciplined for that?

**A.** I do not recall that, I'm sorry.

**Q.** Do you recall the incident report where Mr. Carta was found with two radios in his pocket and he said that they were his? And it was determined that he had stolen the radios from another inmate?

**A.** I don't recall that, I'm sorry.

**Q.** Do you recall the citation where Mr. Carta was cited for being insolent --

**THE COURT:** Do you have a record of this that you could show to him?

**MS. STACEY:** I do, Your Honor.

**THE COURT:** And the issue for me is, assuming this all happened back in 2001, whether it is stale right now; is that --

**MS. STACEY:** Well, it goes to his testimony that he hasn't had any incidents of acting out in the last ten or so years.

**THE COURT:** Yes. I mean, that is why I want to see it. I think that that part is very relevant.

**MS. STACEY:** Just give me a moment to find it.

**THE COURT:** Take your time, take your time. You are doing a fine job.

(Whereupon, counsel conferred.)

BY MS. STACEY

**Q.** I'm showing you a document that is entitled, "Inmate Discipline Data, Chronological Disciplinary Record."

Do you see that?

**A.** Yes, I do.

**Q.** And the bottom of the document is Bates stamp No. 01239?

**A.** It is.

**Q.** And do you see that on 10/11/2008 he was sanctioned for possessing an unauthorized item and he was also sanctioned for being insolent to a staff member?

**A.** Yes, I do.

**Q.** And on the same record, on March 11 of 2006 you see that he threatened bodily harm?

**A.** I am not seeing this, I'm sorry. March 11, 2006?

**Q.** It's -- for whatever reason this isn't working here, sorry.

But it's the mid piece of the document. It says report number and status.

**MS. KELLEY:** That's the date of the incident?

(Whereupon, counsel conferred.)

**MS. STACEY:** May I approach?

**A.** Okay. All right. That's separate.

**Q.** Right. So you see the first incident that we just discussed, the possessing an unauthorized item and being insolent to a staff member. Do you see that in the first

block?

**A.** I do.

**Q.** Okay. And there is a second block. And that second book says that on March 11, 2006 there's threatening bodily harm. Do you see that? Next to the number 203?

**A.** Yes, I see that.

**Q.** And that's --

**A.** That's not a sanction though.

**Q.** I'm sorry?

**THE COURT:** I can't hear you.

**THE WITNESS:** I'm sorry. All I see there is that that was an allegation but there is no sanction.

BY MS. STACEY

**Q.** Well, do you see underneath "threatened bodily harm DIS GCT"?

**A.** Yes.

**Q.** Discipline, good conduct time?

**A.** I didn't know what that meant.

**Q.** Okay. And 27 days is next to that?

**A.** Yes.

**MS. STACEY:** At this point, Your Honor, I'd like to move this exhibit into evidence where we've been referring to it. It's Exhibit 28.

**THE COURT:** It may come in.

**(Government's Exhibit No. 28 received in evidence.)**

BY MS. STACEY

**Q.** Carta, Mr. Carta himself in the Sex Offender Treatment Program admitted that he got mad in prison; didn't he?

**A.** Again, I don't recall specifics; but I'm sure he has, yes.

**Q.** And he admitted that he went overboard in prison; didn't he?

**A.** Again, I have read thousands of pages in this case. I don't recall a specific comment.

**Q.** Showing you -- this is already in evidence as Exhibit 27 -- Bates stamp No. 00938.

(Pause in proceedings.)

**Q.** I'm sorry. I just want to make sure of something.

So the kind of second highlighted paragraph on here, and the sentence reads, "Mr. Carta initially denied history of homicidal ideation but when confronted with contradictory information from his Presentence Investigation Report recalled several episodes of threatening behavior directed at others in his life: Ex-boyfriend, mother, daughter and daughter's boyfriend. Mr. Carta explained that he made these threats out of anger and stated that when he gets mad, he goes overboard."

Do you recall that?

**A.** I see it here but this does not reflect what he's doing now. This reflects his entire past.

**Q.** But these incidents of insolence, threatening another, the incidents on his disciplinary report, they all occurred while he was in a controlled environment with minimal opportunity to act out; correct?

**A.** I would disagree with you there. There is always an opportunity to act out.

**Q.** He was in a controlled environment, Dr. Bard?

**A.** Yes, but that's not what you asked me. You can be in a controlled environment and you can act out. I have evaluated numerous men who have.

**Q.** As has Mr. Carta; correct?

**A.** Mr. Carta has not acted out violently --

(Whereupon, counsel and the witness talking simultaneously.)

**Q.** Has Mr. Carta acted --

**A.** -- he has not acted out sexually.

**Q.** Has Mr. Carta acted out?

**A.** If you consider --

**Q.** Yes or no?

**A.** I'd like to be able to answer the question.

If you consider a verbal threat to be acting out, yes.

**Q.** You have not published an article on sex offenders since the 1980s; have you?

**A.** I have not.

**Q.** Dr. Bard, you didn't diagnose Mr. Carta with anything at all; did you?

**A.** As I indicated, I did not include the substance abuse disorders for which he probably does meet the diagnostic criteria because I was focused on the language in the law that talked about a disorder that has that results -- I apologize -- that results in difficulty refraining from child molestation or sexual conduct. And I did not find a disorder that matched that.

**Q.** And that same law asks you to provide a prognosis; doesn't it?

**A.** I'm not aware of that, I'm sorry.

**Q.** Your report indicates that he is at a low to moderate risk of reoffense; correct?

**A.** That's not a prognosis. A prognosis is something else. If you ask me was I asked to do a risk assessment, yes.

**Q.** Right. It's a new question, Dr. Bard.

**A.** Yes.

**Q.** In your report you have in your risk assessment indicated that Mr. Carta is at a low to moderate risk of reoffense; correct?

**A.** Correct.

**Q.** And you don't think he needs treatment?

**A.** Who says that? I have been saying that all along. I said it yesterday as clearly as I could.

**Q.** Now, you told Mr. Carta -- I'm going to show you a portion of 18 U.S.C., Section 4247(c). C is just the title, "Psychiatric or Psychological Reports." And next piece of that, it talks about how the report should be prepared.

It says, "It shall be prepared by the examiner designated to conduct the psychiatric or psychological examination."

That's you; correct?

**A.** I believe it is.

**Q.** And, "It shall be filed with the court with copies provided to counsel."

And you did that; correct?

**A.** I did.

**Q.** And it says, "The report shall include the person's history and present symptoms."

And you did that; correct?

**A.** Correct.

**Q.** "A description of the psychiatric, psychological and medical tests that were employed and their results"?

**A.** Yes.

**Q.** Your findings; correct?

**A.** Yes.

**Q.** And your opinion as to diagnosis, prognosis and whether the person is a sexually dangerous person under part D?

**A.** Yes.

**Q.** And did you not include diagnosis or prognosis in your report; did you?

**A.** Well, it depends how you define what "prognosis" is. "Prognosis" medically would be what is this person's future course. And I believe that a risk assessment in this case is what was considered a prognosis.

**Q.** Your report contains no diagnosis for Mr. Carta; does it?

**A.** My opinion is that there is no diagnosis for Mr. Carta that meets this law.

**Q.** Now, you told Mr. Carta about the purpose of your evaluation of him; didn't you?

**A.** I did.

**Q.** And you told him what you would do, what he told you would be put into the form of a report; didn't you?

**A.** I told him that I would be preparing a report based on what we talked about and my review of the files.

**Q.** Mr. Carta then had no benefit in admitting to you that he was still attracted to 13-year olds; did he?

**A.** He had no benefit in admitting to me that he was still attracted to 13-year olds, probably not.

**Q.** And you helped the respondent's counsel prepare the defense in this case; haven't you?

**A.** I have only spoken to them in the past few days before court. I don't think I helped them prepare all that much.

**Q.** Well, you have been meeting with respondent's counsel; right?

**A.** I was forbidden to have any contact with them until approximately two or three days before trial. I had very little contact.

**Q.** And in those two to three days before trial you helped respondent's counsel prepare for Mr. Carta's defense; correct?

**A.** I helped them, we discussed my testimony and we discussed some of the weaknesses of Dr. Phenix's, if that's what you mean, yes.

**Q.** And you have testified that Mr. Carta is not a sexually dangerous person; correct?

**A.** In my opinion he is not at this time.

**Q.** And over the past four years you testified in more than 200 cases in the Commonwealth; is that right?

**A.** I believe so.

**Q.** And in none of these cases did you testify that anyone was a sexually dangerous person in the last four years?

**A.** Well, that's because when I do opine that, as I indicated earlier, the prosecution isn't allowed to call me.

**Q.** And you have only testified for the defense in these last four years?

**A.** I have.

**Q.** And your hourly fee is $200 an hour?

**A.** It is.

**Q.** And in the last two years alone in the Commonwealth of Massachusetts you've earned $330,615 testifying for the defense; haven't you?

**A.** I have no idea how much I've earned testifying for the defense.

**MS. STACEY:** May I approach?

**THE COURT:** Yes.

BY MS. STACEY

**Q.** I'm handing you a document entitled, "Payment History From the Commonwealth of Massachusetts." Do you see that document?

**A.** I do.

**Q.** And it appears to document all the times that you have been paid and the cases you have been paid when you worked for the Committee for Public Counsel Services?

**A.** No, that's not what this is.

May I explain this? This is a listing of everything that I have gotten paid for with the individuals' names on them, which is a violation of privacy. It is an ethical violation for you to even have this.

It is under vendor web, the Office of the Comptroller of the Commonwealth. I am the only person who is allowed to access this.

**Q.** Dr. Bard, does it say --

**A.** No, this is an ethical issue. This has happened once before in the Commonwealth and the judge sanctioned the DA.

This is every evaluation that I have done, whether or not I found them sexually dangerous or not.

**Q.** In the past two years --

**A.** Excuse me. This is every evaluation I have done for competency, criminal responsibility, every other forensic evaluation.

**Q.** Okay.

**A.** I find this appalling that you would dare even violate my patients' privacy with this.

**Q.** I did not create that document, Doctor.

**A.** You accessed it.

**Q.** And, Dr. Bard, at the end of that document does it say you have earned $330,615 from the State of Massachusetts?

**A.** I am not looking at that.

Your Honor, I apologize, and I don't want to be held in contempt; but this is not her property. I'm sorry.

**THE COURT:** Ssh, ssh, take a deep breath. Calm down. You will live longer. That is a doctor's advice from up here.

**THE WITNESS:** Thank you, Your Honor.

**MS. STACEY:** May I take the document back?

**THE WITNESS:** This is not hers.

**THE COURT:** What?

**THE WITNESS:** This is not hers. This is a vendor web link that I am the only person who is allowed access.

**THE COURT:** I am not going to get involved in that dispute right now. She produced it. I am telling her to take it back.

**MS. STACEY:** I have nothing further, Your Honor.

**THE COURT:** Okay. Anything else?

**MS. KELLEY:** I have a motion to strike from the record that exchange about anything about that --

**THE COURT:** I presume that he makes $200 an hour. I think that everybody in the world makes $200 an hour except for federal judges.

(Laughter.)

**THE COURT:** So we don't, you know, nothing startling about that fee. And I will just let it stand that he makes $200 an hour.

**MR. GOLD:** We have some redirect, Your Honor.

**THE COURT:** Yes. Go ahead.

(Pause in proceedings.)

**THE COURT:** Now, we are not going to go into that last document again; right?

**MS. KELLEY:** No, we're not.

**MR. GOLD:** No, Your Honor.

**THE COURT:** All right.

(Pause in proceedings.)

**REDIRECT EXAMINATION**

BY MR. GOLD

**Q.** Dr. Bard, can you explain for us, going back to the article from 2008, this Blanchard and Cantor research.

Now, I'm putting it up there and I just want to make a couple of points about it clear for the Court. But could I draw your attention, I am pointing now to a paragraph there. I have some highlighting there. Could you read that paragraph that I have highlighted to yourself and then --

**THE COURT:** Do I see that on my machine here? It doesn't work.

**THE CLERK:** It should be.

(Pause in proceedings.)

**THE COURT:** Okay. Great. Thank you.

**A.** "The existence of men whose erotic interest centers on pubescents has not, of course, been totally ignored."

**THE COURT:** Where are you now?

**MR. GOLD:** I have an arrow there, Your Honor. Do you see the --

**THE COURT:** Yes.

Okay.

**A.** "Coin the term 'hebephiles' to refer to them. This term has not come into widespread use even among professionals who work with sex offenders."

**Q.** Could you continue.

**A.** "One can only speculate why not. It may have been confused with the term 'ephebophiles' which denotes men who prefer adolescents around 15 to 19 years of age. Few would want to label erotic interest in late or even mid adolescents as a psychopathology so the term 'hebephilia' may have been ignored along with ephebophilia."

**Q.** So what are the authors saying in that paragraph?

**A.** I think they're acknowledging that even though the term was coined in the 1950s it has not been accepted by the majority of people in the field. And as they say, particularly those who work with sex offenders.

**Q.** Now, what does peer review --

**THE COURT:** Where did that come from?

**MR. GOLD:** That comes from the, this article, Your Honor, *"Pedophilia, Hebephilia and the DSM-V."*

BY MR. GOLD

**Q.** And, Dr. Bard, essentially we've said this before, the authors here are proposing the hebephilia that they have researched as a diagnosis?

**A.** They are proposing that it be included in the next version of the DSM.

**Q.** And you've read this article?

**A.** More than once.

**Q.** And what is wrong with their proposal? First of all,

what exactly in your reading of what is here are they proposing?

**A.** Well, what they appear to be proposing is a diagnostic category for individuals who show a preference for pubescent people.

**Q.** And how do they define that?

**A.** They don't and that's the problem.

**Q.** What do you mean?

**A.** The problem is, as I indicated, is that there is no definition that has been accepted and has been -- there is no consensus on what this might mean, whether we're looking at people who are just beginning puberty, in the middle of puberty, at the end of puberty. The age of 12, the age of 14, the age of 16, it's not in there.

So there are numerous definitional problems here. But the definitional problems are the least of this study's problems.

There are three basic problems, and I don't want to bore Your Honor with these statistics. Briefly they began with 2800 potential subjects and they purposefully excluded more than half of them because they simply could not believe that individuals who professed no arousal to children yet had committed offenses against the children or adolescents were not deviant.

So they just threw them out and they only looked at

a very small sample of this group. It makes the findings certainly not generalized or anywhere else.

No. two, they showed these subjects various slides and various audiotapes. And they monitored their sexual arousal. They showed them prepubescents. They showed them 11-year olds. There is no reason why they selected just 11, 12 to 14 and 17 and older. They left out 14 to 17. No one knows why. It's not clear in the report.

But you're basically taking away what most people consider normal. And we don't know if these guys who they label "hebephiles" would have shown even more arousal to them. So they only showed them adults and what they were hoping to find.

It raises serious questions about the methodology.

And the third is there was no controlled group of non-offenders to see what do normal non-offending adults show. Three significant problems.

As a result of this there were one, two, three, four, five, six responses to this article published immediately afterwards, each of them criticizing them on the same grounds I did and more.

So certainly -- and these are from people who are doing this work in Massachusetts, in Wisconsin, in California. These are people who are pro-prosecution, pro-defense. Everything is in there. They all agree that

this study is garbage. Bottom line.

**Q.** Dr. Bard, could you describe for the Court what the peer reviewed process is, is supposed to do and how what we're talking about now plays into it?

**A.** Well, what it's supposed to do -- and I don't know clearly what occurred here -- is that papers are supposed to be reviewed anonymously by the editorial board of a certain journal and either accepted or rejected or asked for revisions.

It's too much of a coincidence that both Blanchard and Cantor are on the editorial board of the same journal that keeps publishing their work and hardly anyone else does.

**Q.** And are the critiques you talked about considered part of the peer reviewed process or is that something --

**A.** No, this was done by independent people after the online publication of this article because people were enraged.

**Q.** I'm putting one of those responses on the ELMO. Dr. Bard, have you read this one?

**A.** I certainly have.

**Q.** And is there anything you'd like to tell the Court about Dr. Moser who drafted it or about his comments here?

**A.** Dr. Moser is a psychiatrist, works out of California, very well known in the area.

His comments basically say that you can have

arousal to adolescents and it does not mean that this constitutes a mental disorder.

**Q.** Dr. Bard, I'm asking you the same questions here about the rest of these. Do you know who Dr. DeClue is?

**A.** I do.

**Q.** And who is he?

**A.** He is a psychologist. I believe he works out of Florida. He is known as someone who is generally pro prosecution in these kinds of cases.

**Q.** Is there anything you'd like to say just based on your recollection about the type of thing he is saying here?

**A.** You know, all of them basically meet, basically say the same thing. That you can be aroused to adolescents and it's not a mental disorder. It's not an illness. It's not necessarily deviant.

**Q.** The same question about this one, Dr. Franklin?

**A.** Karen Franklin is a psychologist in California who was particularly critical of this article. Again, I think her point is that, at least one of her points is that a large number of adult heterosexual attracted to adult kind of people show similar kinds of arousal so you can't pathologize what the majority of people think.

**Q.** This response?

**A.** Dr. Ploud is a psychologist and a colleague of mine here in Massachusetts. He was concerned more with the technical

aspects of this study and criticized it mostly on the basis of the lack of stimuli with 15- to 18-year olds which certainly masks the results.

**Q.** Dr. Zander?

**A.** Dr. Zander is a psychologist and an attorney, works out of Wisconsin. Has been very prolific in writing about civil commitment and the lack of numerous -- the lack of validity concerning a diagnosis like hebephilia or the other one that the many jurisdictions use, paraphilia NOS, again non-consent, to find ways to incarcerate rapists.

So this is more of his opinion that you cannot just diagnose on the basis of what someone is aroused to and that arousal is not necessarily pathological.

**Q.** Dr. Tomovich (ph.)?

**A.** I don't actually know him, but the same idea that, you know, his title I think says it all: "*Manufacturing Mental Disorder by Pathologizing Erotic Age Orientation.*"

**Q.** Now, Ray Blanchard published a reply to these?

**A.** Yes.

**Q.** Did you read that as well?

**A.** Yes, I did.

**Q.** And did you consider his arguments in response to these critiques?

**A.** I have certainly reviewed it. I found his responses to be nonresponsive appropriately to the questions that were

raised.

**MR. GOLD:** Your Honor, we've included this series of articles in our exhibit binder. We think they benefit the Court. We'd seek to admit them into evidence.

**MS. STACEY:** Your Honor, I'd object. Under the rules of evidence they can be read but they are not taken and admitted into evidence.

**THE COURT:** She is right.

BY MR. GOLD

**Q.** Now, the government asked you about references in the literature to this hebephilia concept. And it's certainly true that it has appeared.

What is the difference between these references and a diagnosis?

**A.** Well, it hasn't really even appeared much. And it certainly hasn't appeared until the advent of the civil commitment laws.

From 1960 when that book was written until two thousand something it's not anywhere because it's not accepted. And just because someone used it as a descriptive term does not mean that it is psychopathology.

You have that same author Blanchard who has a new term called "teleiophilia." Teleiophilia is erotic attraction to adults. Why do we need a name for something that most people do? It makes it sound like there is some

pathology there.

There is a new term that I believe I have also seen recently, "gerontophilia," attraction to older people. It's individual preference. It's not pathology.

These folks are trying to pathologize everything.

**Q.** Now, how do we square what you're saying with Mr. Carta's problematic sexual behavior? You're not saying that there is no issue there?

**A.** I'm certainly saying that. He has committed sexual offenses. He clearly did not have control over his sexual impulses at those times and they are criminal acts.

Psychologically Mr. Carta has numerous problems. Just because somebody has problems doesn't mean that it arises to a level of a diagnosed mental condition. He has problems with anger, problems with depression. He's had problems with loneliness and lack of support. He's had poor impulse control at times. But that doesn't mean that there is a diagnosis that accounts for all of this.

He is someone who was lived, again, in his words, a terrible life. And he is aware of that.

**Q.** Now, your attention was directed to a piece of testimony by Howard Barbaree from another court case. And I want to put some more of that testimony before you but can you tell us who Dr. Barbaree is?

**A.** Dr. Barbaree is a psychologist from Canada who has been

actively involved in the research of sexual offending.

**Q.** Now, I have pointed on the screen there at a paragraph. Can you read that paragraph.

**A.** "So I think now, I think it's important to note here that there is a controversy in the field about the diagnosis of hebephilia, whether there really is such a diagnosis. It's not included in the DSM. Specifically there is no mention of hebephilia in the DSM but there are some authorities in the field who talk about this disorder and it's been part of the literature for a number of decades."

**Q.** Could you continue.

**A.** "Part of the reason it's controversial I think is that there is a widespread recognized similar sexual interest in the general population in individuals who are quite young, below the age of consent in most jurisdictions but who have developed or are developing secondary sexual characteristics. Fashion magazines and other displays in the media are I think an indication of that. So I think that in the professional literature there is a controversy about whether this is an actual mental disorder or whether it's a variation and sort of normal responses or variation in normality."

**MS. STACEY:** Your Honor, I would just ask that, he's read everything on the page except the last question, "Well, so your diagnosis is paraphilia and also hebephilia?"

So for the sake of completeness, I would ask that that be read.

**THE COURT:** Go ahead. You are entitled to that. Go ahead.

**MR. GOLD:** Okay. That was already, that was the line that has already been read.

**MS. STACEY:** That was not read.

**MR. GOLD:** Oh, I'm sorry. I thought it was.

BY MR. GOLD

**Q.** Could you continue on then.

**A.** "Your Honor, may I question or are you continuing on? Let me know when I can again.

"Well, so you're diagnosis is paraphilia and also hebephilia?

"THE WITNESS: Hebephilia. That's one diagnosis. What I think Dr. Doren has done is taken the diagnosis that's mentioned in the DSM, paraphilia not otherwise specified. This is a category of diagnosis in the DSM that allows clinicians to make a diagnosis when an individual's symptoms don't fit exactly the criteria for other disorders. And so Dr. Doren has taken that diagnostic category from the DSM and then added the descriptor for hebephilia."

**Q.** Now, Doctor --

**MS. STACEY:** I'm sorry, there is one final paragraph.

**A.** "But it is true that hebephilia is a -- is a paraphilia that's discussed in the literature. And there are some authorities in this field who believe it's an actual disorder."

**Q.** And could you continue on until the end of this page, Dr. Bard.

**A.** "THE COURT: Okay. You may inquire.

"And your feeling is what? Is it an actual disorder or not?

"Subject to being hoisted by my own petard here because I just -- I was just reading the other night a chapter that I had written about some colleagues and in a section that I didn't write but my colleagues did, there is an argument for hebephilia being an actual disorder. I honestly think that it's questionable whether it's a real disorder. There is quite a prevalent interest in the general population in this age group of individuals. We have done and I have published in the past studies where we have tested volunteers in the general population and their sexual responses to individuals of that age range and you get a significant proportion of the general population show significant responses. So I guess I'd argue that it's, it is a descriptive term that can be applied to a particular sexual interest. Whether it constitutes a mental disorder or not, I'm not sure."

More?

"And I would say that in comparing the seriousness of hebephilia with other paraphilias, for example, comparing pedophilia with sexual sadism, its seriousness, the degree of pathology is much less than with the other paraphilias."

**Q.** Dr. Bard, could you comment on what Dr. Barbaree is saying here? First of all, is he saying hebephilia is a disorder?

**MS. STACEY:** Your Honor, the witness has testified he is unfamiliar with this. And the document that's just been read speaks for itself and is entered into evidence for consideration by the Court.

**MR. GOLD:** Well, it's another clinical opinion, Your Honor. I'd ask that --

**MS. STACEY:** Based on the foundation that Dr. Bard said he had no personal knowledge of that.

**THE COURT:** I don't think I need any explanation. I think I understand the testimony.

BY MR. GOLD

**Q.** Now, do you agree with Dr. Barbaree's position as expressed in that testimony?

**A.** I agree with his ultimate conclusion that it is a -- it is not a paraphilia, it is a description.

**Q.** Well, now sometimes he describes it as a paraphilia?

**A.** Right. He goes back and forth. That's why it was hard,

even if I hadn't been asked your last question, he says a lot of things there. He concludes that, at least that's what it seems to me, that it's not a disorder. And that if one does consider it a disorder, which some people do, it is on the less severe side.

**Q.** Now, you were asked on cross-examination about your discussion of hypersexuality during the deposition?

**A.** Yes.

**Q.** Now, is Mr. Carta or was he hypersexual and is that a clinical term?

**A.** It's a clinical term. It's, again, it's a descriptive term. It is not a diagnosis so it's not offered as one. But it describes someone who is very sexually oriented, whether he is looking for -- I believe Dr. Wallace talked about this too. There are individuals who look to have their emotional needs met via sex. And certainly Mr. Carta would fall under that.

His frantic searching for sexual contact and his compulsive masturbation at times certainly indicates that one of the only ways that he felt good about himself was to engage in some sort of sexual contact with others or self-masturbation.

**Q.** But now we've heard testimony about his own comments saying that he devoted 12 hours in a particular day to masturbation. Now, how did you interpret that comment? How

did you --

**A.** Well, I think again that's taking it out of context. At least my impression from speaking to Mr. Carta and from reading the files was that that was the worst it had ever got. And it wasn't that way for a period of weeks, months or years. That there were times when he would sit in front of a computer screen and watch pornography and masturbate for long periods of time. But clearly he didn't do that every day nor even every week necessarily. And if he did, it was for a relatively short amount of time.

He will be the first to tell you that. This was a big problem. He acknowledges all of this.

**Q.** Now, we have talked a great deal --

**THE COURT:** How much longer are you going to be?

**MR. GOLD:** Ten minutes, Your Honor. Maybe fifteen if you are thinking of --

**THE COURT:** I am thinking of.

(Laughter.)

**THE COURT:** We will see you -- what do we have?

**THE CLERK:** We will see them at 2:30.

**THE COURT:** We'll see you about 2:30. We have something at 2:15.

(Luncheon recess.)

**AFTERNOON PROCEEDINGS**

**THE COURT:** Okay. Are we all set?

**MR. GOLD:** May I proceed?

**THE COURT:** Yes, please.

**LEONARD BARD, Resumed**

**REDIRECT EXAMINATION, Continued**

BY MR. GOLD

**Q.** Dr. Bard, good afternoon.

**A.** Good afternoon.

**Q.** You were asked on cross-examination about a Dr. John Money; do you recall that?

**A.** Yes, I do.

**Q.** And you were asked about a particular article, *"Paraphilias Phenomenology and Classification*: which appeared in the American Journal of Psychotherapy in April of 1984. Do you remember that?

**A.** Yes.

**Q.** Can you tell us who Dr. Money is?

**A.** Dr. Money is a psychologist who was a researcher in this area in the 1980s and whose opinions tended to be sort of extreme. He was later employment as a consultant for *Penthouse Magazine* and is not taken seriously in the academic or the psychological community.

**Q.** Now, we had the chance to look at this article over the break. Do you remember that?

**A.** Yes.
**Q.** And one of the things we looked at was this list of paraphilias which John Money has listed here on page 167 of the article. Could you put that into context for the Court?
**A.** Well, according to this article, Dr. Money believes that the paraphilias that were put forth at that time was DSM-III. The paraphilias in DSM-III don't do justice to the kind of paraphilias that actually exist. So he went through a, I believe 36 different paraphilias that he believes exists. There is no research associated with any of this. This is just his opinion.
**Q.** Well, some of these appear in the DSM-IV?
**A.** A couple of them here and there, yes.
**Q.** And what is the ephebophilia that appears there?
**A.** Ephebophilia he describes as arousal to youth.
**Q.** And does Dr. Money describe any research isolating this paraphilia in this article?
**A.** No.
**Q.** There was testimony earlier in this case, Dr. Bard, about Mr. Carta having failed on supervised release or probation. Do you recall that testimony?
**A.** I believe Dr. Phenix noted that, yes.
**Q.** And can you for the Court outline Mr. Carta's period immediately preceding his arrest for the current child pornography charges?

**A.** Well, I believe that he was arrested in late 1981 on state --

**Q.** '81?

**A.** I'm sorry. In 2001 for state charges. And then he was charged in federal court in, I believe it was February of 2002. And he was not incarcerated until October of 2002. So I believe there was a period of about eight months in which he was in the community under the supervision of probation where he participated in sex offender treatment and was compliant with all of the probation conditions.

**Q.** So you are not aware from that period of any violation of any conditions of supervised release?

**A.** There was no violation that I saw in the files. There was no violation that Mr. Carta has told me about.

**Q.** You were asked on cross-examination, Dr. Bard, about your declining to diagnose Mr. Carta with a personality disorder today. Do you recall that?

**A.** Yes, I do.

**Q.** And the disciplinary reports that Mr. Carta has generated in the past few years were brought to your attention?

**A.** Yes.

**Q.** How do those figure into your diagnostic conclusion?

**A.** Well, whenever we diagnose, we're not looking for one instance of something or even two. We are looking for a

pattern. That's how we diagnose. And while we certainly don't expect Mr. Carta who clearly was functioning in a very antisocial way in the past to overnight become a Pollyanna, but what we do hope is that as a result of treatment and maturity that he would lessen the frequency of those antisocial behaviors.

And that's exactly what happened after he completed the CODE Program which we talked about earlier, a year-long intensive program dealing with criminal thinking and anger management and substance abuse and all that. And since that time I believe there were two or three disciplinary reports in about five years. Now, that's not a pattern, especially for someone who had I believe, we counted up 18 or 19 different sentencing dates in his past.

So he certainly made dramatic changes in the disciplinary reports that he was sanctioned with. One was for making a verbal threat which he clearly did not carry out. And one was for having in his possession two radios that belonged to somebody else. And Mr. Carta told me that he works on radios and headphones in order to earn a little money.

So maybe it's a violation but it's certainly nothing like we would expect to see if someone was truly an antisocial personality disorder individual.

**Q.** Well, have you worked on cases where you saw evidence of

acting out in prison?

**A.** Many times.

**MS. STACEY:** Objection.

BY MR. GOLD

**Q.** And what would you expect to see to support a present diagnosis of antisocial personality disorder?

**A.** I would expect to see a similar, not necessarily the exact same kind of behaviors or the same frequency but the same overall kind of lifestyle because that's what a personality disorder is. For lack of a better term. It's a lifestyle.

You would expect to see numerous fights, arguments, threats, assaults, sanctions for being -- what's the word that they often use? I can't recall. I'm sorry.

But being verbally abusive to officers and doing all sorts of antisocial things that would illustrate an inability to manage his emotions, to manage his anger, to deal with the sadness that he experience. Instead of actually experiencing those things you would expect him to act them out.

And we simply don't see that. I have seen it in many other individuals who have gotten hundreds of disciplinary reports while incarcerated. Not with him though.

**Q.** Turning back to Mr. Carta's history growing up and the

incidents where he had sexual contact with children when he himself was a child. Is it appropriate to characterize that as sexually violent conduct?

**A.** In my opinion it is absolutely not.

**Q.** Why not?

**A.** Because 11-year olds are usually not held criminally responsible for their behavior, especially 11-year olds who have a history of being sexually molested themselves. They have learned unfortunately to associate sexual contact with either attention, approval, comfort or something else.

So when they turn around and do it to somebody else, it's not necessarily for their own sexual gratification because most 13-year olds don't -- I mean most 11-year olds don't know anything about sexual gratifications. It's not in their vocabulary.

But they do this because it feels good or it's been done to them. And to pathologize that is in my opinion going way beyond the bounds of what we know about developmental psychology and sex offending. 11-year olds just don't out of the blue decide to do this.

In Mr. Carta's case I think it's clear that his own victimization led him to develop distorted thoughts and attitudes about sexuality. And given that he was a child at the time, he acted out with other children, some of which whom were younger than himself and some were more or less

the same age. And to call that sexually violent behavior, well, in my opinion it's, you know, it certainly is not.

**Q.** And does this history that Mr. Carta had being abused, does that make him more likely to recidivate in the future?

**A.** No, I think the research is clear on that point, that there is no relationship between someone being abused themselves and reoffending sexually.

Now, we know that many individuals who have been sexually abused do go on to abuse others but many don't. But in terms of recidivism it simply is no, no link.

**MR. GOLD:** I have nothing further.

**THE COURT:** Okay. Anything else?

**RECROSS-EXAMINATION**

BY MS. STACEY

**Q.** Dr. Bard --

**THE COURT:** I think this young lady is trying to reach you.

**MS. STACEY:** Oh, I'm sorry.

As usual I forgot something.

(Pause in proceedings.)

BY MS. STACEY

**Q.** Dr. Bard, is it your testimony today that Mr. Carta never violated his probation?

**A.** No, it is my opinion that during the period of time, I believe from '01 to '02 he did not.

**Q.** Because he did violate his probation in 2000; didn't he?

**A.** I believe that he violated at some point before that.

**MS. STACEY:** I have nothing further.

**THE COURT:** Okay. I guess you are excused.

**THE WITNESS:** Thank you, Your Honor.

(The witness was excused.)

(Pause in proceedings.)

**MS. KELLEY:** We rest, Your Honor.

**THE COURT:** Okay. The government?

**MS. STACEY:** I'm sorry, Your Honor, I believe because it's a civil case they would close first.

**THE COURT:** No, but I am just talking about any rebuttal or anything like that.

**MS. STACEY:** No.

**THE COURT:** Okay. Both sides rest.

It is a civil case, yes. Are you ready to argue?

**MS. KELLEY:** Yes, I am.

**THE COURT:** Okay. Go ahead.

**MS. KELLEY:** Is your screen working up there?

**THE COURT:** Yes, I think.

It appears to be on but nothing is on it.

**THE CLERK:** Did you put something up?

**MS. KELLEY:** In a minute I will.

**THE COURT:** Okay.

**CLOSING ARGUMENT BY MS. KELLEY**

**MS. KELLEY:** Your Honor, I would first like to address the question of whether the government has demonstrated that this so-called diagnosis of hebephilia on which their case rests is a valid diagnosis under the standards of the Daubert case.

It is not. This is junk science. They have not proven by any standard at all that Your Honor should consider this as a valid scientific principle on which to base your decision in this case.

Judge Saris threw out that diagnosis as not comporting with the Daubert standard. She heard from an expert named Daniel Kriegman on that. And it's very explicit in her findings which we appended to our pretrial motion or pretrial brief that she rejected that.

And also you have --

**THE COURT:** Was that the end of her case?

**MS. KELLEY:** No, that individual Jeff Shields had a dual diagnosis of pedophilia and hebephilia. She allowed the case to be tried under the theory of pedophilia. The jury hung. And so far it appears Judge Saris is also hung. It's been five and a half months and she has not rendered a decision in that case. She had an advisory jury that was unable to reach verdict.

So if you look at the Hawaii case, I think given

that testimony that we kind of poured over earlier this afternoon, it is clear why the judge made the finding in that case she did. She said, well, it may be a valid mental disorder for purposes of the statute but it's not serious which the statute requires. And so she also found that under 4248 hebephilia is not a serious mental disorder sufficient for it to be considered as a basis for civil commitment.

Now, what the government is trying to do, and they have set out some cases in their pretrial memorandum, is to urge Your Honor to accept the diagnosis of hebephilia because some state courts have done so.

And I am reminded in this case of growing up in a household with my dad, a Baptist minister, and I used to explain, you know, this is the way other kids behave and how they get to act. And my father would say to me, Not in my house. Not here you don't do that.

We don't know what evidence those other courts took. We don't know what experts they listened to. We don't know anything about their decisions. In federal court as this issue has been litigated no one has accepted this. You would be the first.

If you look at the Massachusetts case that they cite, in that case, I believe it's the Starkus case from 2007, it's an Appeals Court case, not an SJC case. In that

case the court says, well, we don't know if the mental disorder under the Massachusetts statute has to be in the DSM. And then they go on to find that that person had a valid diagnosis of pedophilia.

Now, I would urge Your Honor not to consider that a diagnosis that is not in the DSM is useable under the statute. Because as Dr. Bard testified, this is how it's done in the field of science, of psychology and psychiatry and mental health. You have a consensus in the relevant community, scientific community, they decide is a diagnosis valid or not. And then they put it in the DSM.

This is the fire storm of controversy that has been created by this Blanchard article, which does not validate this diagnosis. Far from it. This is really the best piece of evidence that the government has that this should be a diagnosis because these quacks up in Canada have proffered it in this article.

And you're going to hear the government argue, oh, this article has been peer reviewed. Well, Dr. Bard as he said is very suspicious of that. All the articles they cite in support of their research in that article were written by them. They are on the editorial board, the authors of this article, of the journal that published the article. So you have to wonder in that case how meaningful the peer review really was.

The scientific validity of the article also is further undermined by these articles that came after the proposal that this hebephilia be included in the DSM by very highly respected people in the field saying this is garbage. This diagnosis does not belong in the DSM. Now, why doesn't it?

If you are wanting to find out who is a pedophile, you can hook up a bunch of normal people to a penile plethysmograph and show them pictures of children and they don't get aroused. So you know that when you have an individual who does get aroused by those kind of pictures of prepubescent children, that is abnormal. It's deviant.

You can point out this little group of people has a problem. They're not like everyone else.

If someone is, you know, turned on by shoes, which is one of these paraphilia NOS's here, you can show them pictures of shoes and they get aroused. That's not normal. Most people don't get aroused by looking at pictures of shoes.

If you show a bunch of normal people pictures of teenagers, they are aroused. It's not deviant so it's not a disorder. That's why it's not in the DSM.

Dr. Bard listed a lot of other problems with this diagnosis in his testimony. Not only is it not deviant, you can't really define it because of that, who is and who isn't

a hebephilia. People who have sex with underage teenagers are criminals. They are breaking the law. But they are not disordered which this statute requires.

The government even reaches to argue that this so-called diagnosis which Mr. Wood, Dr. Wood now, but Mr. Wood then as a student intern with no experience in treating adults, because he wrote in a report that somebody is a hebephile, that qualifies it as a mental disorder generally accepted in the scientific community?

The government will also argue that because Dr. Phenix came and testified here that it's generally accepted, that makes it generally accepted. That's like proffering this book by Denis Doren who wrote a book. The fact that someone writes a book about something doesn't make it so. Or doesn't make it a valid diagnosis.

You could write a book about how the holocaust didn't happen. That doesn't make that true.

You can get on the witness stand and say, yes, it's generally accepted. No, it's not. We have a case from the Missouri Court of Appeals criticizing Dr. Phenix and her methodology --

**MS. STACEY:** Objection, Your Honor. This is not in evidence.

**MS. KELLEY:** The case is cited in our pretrial brief.

**THE COURT:** That is a citation. It is not evidence.

Go ahead.

**MS. KELLEY:** If you read that case, what the court there says is Dr. Phenix came into our court and testified that a female was sexually dangerous and likely to repeat her crimes in the future.

**MS. STACEY:** I object, Your Honor. This is extrinsic evidence. They didn't even cross Dr. Phenix on this.

**THE COURT:** I take it it is a published citation she is arguing from.

**MS. KELLEY:** It is and it's cited in our --

**THE COURT:** Overruled.

Start again, please.

**MS. KELLEY:** She testified there that a female was sexually dangerous. I'm not sure this (indicating) is focused.

And what the court here says is, "Dr. Phenix has never diagnosed or counseled female sex offenders. She couldn't have had any formal training in the assessment of them because no one has performed any research to support such training. Thus, the factors she considered in forming her opinion of the likelihood that Angela would reoffend sexually are based on clinical expertise that is simply

nonexistent. They are simply unproven and untested assumptions that enjoy no widespread acceptance in the psychological community."

Now, this is not a case involving a female sex offender. It's involving a male sex offender. And there is research to support clinical, excuse me, statistical assessment of male sex offenders' recidivism rates.

But what this says about Dr. Phenix is that she is capable of coming to a court and sitting there and saying something that is based on nothing. That's what she did there and that's what she did here.

She is one of a very small group of government experts who will come in and testify that this diagnosis that is utter garbage and has never been proven by any research is valid and should be used to lock people away for a day to life.

Now, why would you care if you have to be so exacting with the science in a case like this? Because nobody likes a sex offender. That much is very clear.

The statute gives Mr. Carta due process rights. And there is good Supreme Court precedent from Kansas versus Crane and Kansas versus Hendricks that a person facing civil commitment in these types of situations is due constitutional due process rights.

You cannot do this to someone, you cannot send them

away to a prison for an indeterminate period of time. In Massachusetts at the Treatment Center the average time to stay there is twenty years. In Minnesota no one ever gets out. We don't have any statistics yet on the federal program because no one is there yet.

This is a momentous decision for the individual facing civil commitment. And you don't want to do it on junk.

The government is going to argue that with regard to the Daubert argument that this diagnosis of hebephilia is not in the DSM but the diagnosis of paraphilia NOS is.

This is from the government's exhibit book (indicating) and it shows that part of the DSM-IV-TR, 309.9, Paraphilia Not Otherwise Specified.

Now, in the main part concerning paraphilias the authors list sort of the main paraphilias that people know about and that are common. And what they say is you have to have recurring, intense, sexually arousing fantasies, sexual urges or behaviors involving nonhuman objects, which we know this isn't, the suffering or humiliation of one's self or one's partner. That would be sadism, or masochism. Or, three, children or other non-consenting persons.

Now, the government is going to argue that this fits into that category, children or other non-consenting persons. But you know from Dr. Bard's testimony that the

only children defined here are prepubescent, not post-pubescent people. They're not defining children legally. And there is a good reason for that. Because the age of consent varies from place to place.

Under that definition you would be molesting a child in Virginia who is about to turn 18 when in Kentucky you could have been having legal intercourse with them for two years. So you can't have that, that's not science. Children are prepubescent in the DSM.

Furthermore non-consenting, if you recall Dr. Bard read a note from the author of the DSM that said non-consenting has to do with voyeurism, sadism or exhibitionism. That is, somebody reveals their body to someone who doesn't want them to, that's what we mean by non-consent. Not a legal structure about an underage teen, a 15-year old or 16-year old or a 17-year old in Virginia, that's not what they're talking about.

And really the kind of silly thing is they list some of the more better known paraphilia NOS's here. And they say, for example, Examples include but are not limited to. These are the more common ones: Telephone scatologia, necrophilia, that's a love of corpses, zoophilia, love of animals, urophilia, you know, being obsessed with urine, being aroused by urine.

And what are we going to put after that?

Attraction to teenagers? It doesn't make sense.

They're trying to fit a round peg into a square hole. And the kind of controversy and outrage in the psychological community is evidence of that. It doesn't go in there. That is not where hebephilia belongs.

Hebephilia belongs as a descriptive term as Dr. Wallace, I didn't call him as an expert but he ended up telling you hebephilia is a fake diagnosis. It's not a valid diagnosis but it may be useful for clinicians to describe someone who is attracted to teenagers and underaged teenagers. But it is not a mental disorder.

There are a lot of problems with this statute. You saw the experts both struggling with the definitions because there aren't any. The BOP has issued some regulations that are not in the statute very broadly defining child molestation and sexually violent conduct. But Congress did not put any definition in the statute.

And as Dr. Bard said, this is tough. In Massachusetts we have a definition. Here it's nothing. What is sexually violent conduct? Is it having sex with a 16-year old? What is child molestation? Does it differ depending on which state you're standing in?

In North Carolina this proceeding has been held to be unconstitutional. Judge Saris kept out the SOTP records that you let -- against one man that you let in against this

man which basically constituted the whole case against him.

There is a footnote in the case from North Carolina holding the statute unconstitutional criticizing Judge Saris's ruling in a case here that you don't have to be lawfully in BOP custody at the time they move against you, because we have a fellow who was unlawfully in custody and he had overstayed his sentence but they moved on him anyway. They miscalculated his sentence. And she ruled that is fine, you don't have to be in lawful custody. There are all kinds of problems with this statute.

If you find that we have not mounted a successful Daubert challenge and you go on, let's say you find that he has a serious mental disease or disorder and you go on to evaluate the rest of the criteria in the statute, we still win.

Even assuming Mr. Carta has a serious mental disorder, which we know he doesn't, anyone who watches TV and sees pictures of young people on TV knows it is not deviant to be attracted to teens. Nevertheless, does that mental disease or disorder mean because of that disorder he will have serious difficulty refraining from child molestation or sexually violent conduct, however you define that? No, it does not.

Now, Amy Phenix testified that he's at a high risk to reoffend. And how did she come to that conclusion?

Well, you heard about the actuarial instruments, the Static-99, the Static-2002, the Mn-SOST-R.

I find it hard to believe myself not being a social scientist that you can answer six questions about someone's past and predict their future. It seems crazy. But we are told that these risk factors have been studied and tested out and validated. And so we can have some confidence in these numbers.

What are the numbers? Well, that's another good question. Because you heard that the Static-99 has certain percentages associated with five-year recidivism rates and ten-year recidivism rates and that they're wrong. They're too high. They have just been revised.

Of course, Dr. Phenix didn't bother to revise them. She just testified to the old ones. But what we know from the old numbers is that after five years, if you take a hundred people who score the same as this man, 19 percent of them are going to recidivate. And after ten years 27 percent.

Now, how you can ever get to a clear and convincing standard on those numbers I don't know. A clear and convincing standard that he has a mental disease or defect that is going to cause him to not be able to stop himself from reoffending. You can't.

20 percent, 27 percent, that is the high risk. It

is funny how they turn -- call these things. That's high risk.

It's also very interesting, you have a hundred people, you have nineteen of them who are going to reoffend, how do you know which group he is in: The reoffending group or all the people who are not going to. You don't know.

These numbers we do know have to be adjusted. And the one dynamic factor, because you heard Dr. Bard say the problem with these actuarials is you always score the same no matter who you are, where you are, what you did, so you do adjust them according to some specified factors.

And age is the big one because everyone knows intuitively and now also scientifically according to Dr. Bard that sex offenders are going to reoffend less as they age.

Now, on the Static-99 you actually get credit for being above the age of 25 but that is very vague. Because as Dr. Bard was saying, really starting at age 50 things really precipitously declined.

Dr. Phenix testified that the evidence on age was mixed and so she wasn't going to consider it at all. That's like saying the evidence on evolution is mixed. It's not mixed. Dr. Bard said yes, there is many studies on this. They all show a substantial decline. And he said you adjust the Static-99 under the old regime because it should be

lower now. That for people like Mr. Carta who scored the same and who are his age, his new number is 13.8 percent.

So out of the hundred people his age, 13.8 percent of them are going to reoffend within five years. That's very low.

And if you take into account other factors, it gets even lower. I mean, did you hear Dr. Wallace say in their group, you know, they have a lot of sex offenders they're treating there, over a thousand at a time.

The recidivism rate is 1.7 percent and that's inflated by a bunch of flashers who recidivate at a rate of 50 percent because they're so compulsive. These are very low rates.

So Dr. Phenix doesn't account for age at all. Read her report. She goes through the actuarials and then she gets to these so-called dynamic and protective factors. She never talks about age at all.

If you look at how she scores, for example, one of these other instruments, the MnSOST-R, she scored it at an 11 in her report and she gives some very high percentage of recidivism rates, it's like 47 percent or something. On the stand here she said, oh, I scored that wrong, it's actually a five. It's not that high.

Mr. Gold read to her from something she uses when she teaches people which says don't use the 19 -- the

Static-99 from 1999, use the 2002 because we know that the Static-99 is too high. She didn't even do that.

When Mr. Gold scored it with her here, Todd Carta came out lower. He's not high risk, then he's moderate. She doesn't even care. Did she revise her opinion at all? Did she say anything about that? No.

Incidentally, on this MnSOST-R actuarial Dr. Bard scored Mr. Carta zero. If you read Dr. Phenix's report, there are many things she doesn't consider at all such as age. There is absolutely no mention of the factors that we brought up today about what controls he's going to have on him when he gets out. Nothing. It is not even in her report. I don't know if she even acknowledges it.

I think in her testimony she might have been asked and she said, oh, that doesn't matter to me. Well, why not?

The government is going to argue that Mr. Carta dropped out of treatment and that his behavior in treatment demonstrates that he has this compulsion and he can't stop himself and he has to be around younger people.

If he had a true compulsion to have sex with younger people, he would have had sex with somebody in that program, which he absolutely did not. He was befriending younger people. It was one of several problems for him, issues for him in that program.

If you read the records that the government

introduced into evidence, in his discharge memorandum that Dr. Wallace wrote he writes interestingly the very day he submitted his copout, one of his good friends whom he had ratted out in this group meeting was expelled. This was one of the major reasons why he impulsively quit the program. And he does have a problem with impulsivity. We know it from the CODE Program. He kept trying to quit that program. They would talk him back in.

And if you listen to Dr. Wallace, he said, yeah, I think he would have come back in but he was too embarrassed. He had said he was leaving so firmly. Does this demonstrate some kind of horrible compulsion he has, he can't control himself? No.

People who cannot control themselves sexually are masturbating in prison. They're having sex with other inmates. They're cutting out pictures of children. We have seen that even in the group of people we have here awaiting these hearings. People with very frequent disciplinary reports for acting out sexually. He has not one instance of any type of that conduct. And that's because he can control himself. The record demonstrates it.

Dr. Phenix says in her report, oh, he violated probation three times. I can't find three times in the record. I can't find it in there. And does she ever point out or even give you a hint of considering that in February

of 2002 he pled guilty and got probation in a Connecticut state case and was released. And the conditions of his probation were sex offender counseling, to stay clean, drug and urine analysis for drugs, and he did it. He did it. If he had violated that probation, you would have heard about that.

In April of 2002 he walks into federal court, because he had been cooperating with the government in that child pornography investigation, and he pleads guilty to an information on his initial appearance.

And with the government's consent he walks right back out the door. Mr. Public Enemy No. One now, and he is out from April of 2002 until he is sentenced in October.

So from February 2002 to October of 2002 he is a free man. And what does he do? He goes to sex offender treatment. He stays sober. And he has this sentencing and the judge reduces his sentence on the government's motion.

This guy -- and we have the sentencing transcript if you want to see it. They knew good and well he was a dangerous person. They talked about his offending. It's not that all this stuff came out in treatment later that they didn't know about. They knew he was a risk. But they also knew, and correctly so, every sex offender is a risk. We are not going to lock them all up forever.

This kind of statute and this kind of commitment is

for someone who is so compulsive and so dangerous that they cannot control their behavior. And he has demonstrated that he can.

He has a couple of disciplinary reports. As Dr. Bard said, people don't change overnight. He was threatened by an inmate. The records are very clear on that. And he made a comment about throwing hot oil on someone. Did he do it? No. Did he hit the person? No. Is this a pattern he has? Yes. This is that old pattern rearing its head.

He'll make a verbal threat when he gets angry. And he did it once in prison. He has two radios on him because he's fixing radios for people and you're not supposed to be having other people's property on you. That charge happens to be on appeal right now.

You don't see a pattern of his misbehaving. Is he still an angry guy? Does he need counseling? Does he need help? Yes. Do you know what it's like to be so close to your release after serving a 60-month sentence and to get driven to Fort Devens, you don't know why? And then to sit there for two years.

Has he acted out in Devens? Has he been a behavior problem? No, not at all. The evidence the government has to bolster their contention that he is so sick that he cannot control his behavior is so pathetic. He befriends

some twenty somethings in a treatment program. He drops out of the treatment program which was voluntary to begin with. He makes one threat against another inmate in seven years of incarceration.

Since February of 2002 this man has been straight and sober. And you can say all you want, oh, he's in prison. That means we keep him in prison? He's in prison so he hasn't really been tested so let's lock him on a unit all by himself in Butner and see how he does there.

You heard Dr. Wallace talk about the hopelessness of a person who wants help and needs help but sees no end to what is happening to them. You can't do it to someone. You can't say without very good evidence you are so hopeless and sick we are putting you in there and we'll decide when you get out. No end in sight for you, buddy.

He has a wonderful and very safe and strict bunch of conditions waiting for him. He is going to have to go to sex offender treatment. A series of questions were asked of Dr. Wallace, oh, he's going to have to stay in, he could fail, he doesn't have to do this, he could get terminated. You know what happens if he gets terminated? He goes back to prison and he is facing civil commitment again. All that is required is that he be in BOP custody.

How desperate do you think he is going to be to keep his nose clean and not get violated? How hard do you

think he is going to try in treatment? They already know everything about him.

You heard Dr. Wallace say he was amazed at how this man in voluntary treatment completely opened up. He didn't need any type of update because he had already told everything about himself. Look at those questionnaires, it's incredible what he told on himself that landed him here.

And if you look at the consent form which says nothing about this process, nothing about anything there ever being used against him, it's heartbreaking to take someone into a treatment modality like that and urge them to get help and to be honest and to tell every deviant thing they've ever done their whole life and everything that happened to them as a child.

How do you think it feels to have Dr. Phenix up there listing things he did as a child as sexually violent conduct for which he should now be committed indefinitely?

So he tells all these things and this is the result. If he goes to treatment this time, he is going to have a very strict set of rules. You saw, they will tailor the rules to his specific problems.

And I don't think there is any question after hearing Mr. Collette talk he is going to be watched like a hawk. It's not just Mr. Collette with that case load. He

said we have a team approach. And he is going to be talking to therapists. And he's going to be polygraphed. And he's going to have the State Trooper after him.

And if violates his supervised release in any small way, he will be back in custody. That's all it takes.

If he were to ever get caught with child pornography, it's a 15-year minimum mandatory. He is not doing these things anymore.

I would just like to close by urging Your Honor to adopt the standard that is set out in the Abregana case, which is cited in our pretrial memo, for the level of lack of control you must find in order to find that Mr. Carta has a mental disease or defect as a result of which he cannot control his behavior.

And the court there said, "U.S. Supreme Court precedent makes clear it must be difficult, if not impossible, for the person to control his dangerous behavior."

And the court there is citing Kansas versus Crane and Kansas versus Hendricks.

Difficult if not impossible. That's the standard.

It is not impossible for Todd Carta to control himself. He has proven that. And I ask Your Honor to find that he is not sexually dangerous.

Thank you.

**THE COURT:** Why don't we take a five-minute break, give everybody a chance to run in place and then we will come back. All right.

**THE CLERK:** All rise for the Honorable Court.

Court is in recess.

(Recess.)

**THE CLERK:** All rise for the Honorable Court.

**THE COURT:** All set, everybody?

Sit down, please. Ready to go?

**MS. STACEY:** Your Honor, Todd Carta is a sexually dangerous person.

**THE COURT:** Wait a minute.

(Whereupon, the Court and the Clerk conferred.)

**THE CLERK:** Sorry.

**THE COURT:** I am sorry. Start again.

**CLOSING ARGUMENT BY MS. STACEY**

**MS. STACEY:** Your Honor, Todd Carta is a sexually dangerous person.

The government has shown by clear and convincing evidence that Mr. Carta has preyed on young children since he himself was a child. He has engaged in a pervasive pattern of seeking out young boys who are increasingly younger than he was. He preyed on them. He groomed them.

He molested them. And he molested them continuously until his federal conviction when he was in his forties on a child pornography offense.

Now this Court has heard evidence of Mr. Carta's pattern of predatory behavior, his obsession with children as young as 13 years old.

When Mr. Carta was 11, between the ages of 11 and 13, he molested and orally copulated a three-to four-year old child who was in diapers. During this same time he orally copulated his cousin who was seven. And he did that ten times for a one-year period of time.

When he was 15 years old Mr. Carta orally copulated a similar aged male. And when the male refused to orally copulate him, Mr. Carta shot him with a BB gun.

As Mr. Carta aged, however, his sexual preference did not. Throughout his adult life Mr. Carta orally copulated 13-year old boys. He engaged in sexual acts with 13-year olds. He met 13-year old boys on chat lines. And he later orally copulated these victims.

He engaged in sexual activity with children ages 13 to 17, his own stated preference.

Since he has been an adult you have heard evidence that Mr. Carta has admitted to dozens of victims under the age of eighteen. Those admissions that were contained in the sex offender treatment file have been entered into

evidence in this case.

Mr. Carta has never been convicted for any hands-on contact offenses so there is no deterrence to Mr. Carta's behavior for 30 years. For 30 years he molested children. And as Dr. Phenix has testified, nothing today has changed for Mr. Carta. He never completed any treatment for his sexual offending. He never took any other steps to stop this behavior. And when he was confronted with this behavior, Mr. Carta became angry, he became defensive and he engaged in cognitive distortions or blamed his victims.

Mr. Carta's behavior is ingrained. And as Mr. Carta admitted in the Sex Offender Treatment Program, the questionnaire that's been admitted into evidence, "I have been deviant my entire life."

When Mr. Carta finally began sex offender treatment at the Bureau of Prisons facility in Butner, North Carolina, he couldn't handle it. It was too difficult for him. And you heard Dr. Wood describe how he continued his sexual offense pattern. He continually went after the newer younger 19- to 20-year old men in the program, grooming them under the guise of mentoring them and doing this while he admitted that he was attracted to these men, sexually attracted to these men.

When staff at the Bureau of Prisons and when Mr. Carta's fellow inmates confronted Mr. Carta about this

behavior, again, he got angry, he got defensive but he didn't stop. Rather than stop socializing with the younger members of the program, rather than recognize how this behavior was mirroring his offense cycle, his offense pattern, he quit the program.

Now, both Dr. Phenix and Dr. Bard agree that by quiting that Sex Offender Treatment Program Mr. Carta's risk of reoffense has increased. And both Dr. Phenix and Dr. Bard agree that someone who drops out of treatment is at greater risk to engage in another act of child molestation.

And now when he can't even complete treatment in the Bureau of Prisons that was free, that was convenient for him, that was located in the very unit where he was incarcerated, where his therapist was available during the day, and where he was in a program that was free from any distractions such as computers and younger boys, he asks you now to consider the treatment he might receive if he's released on an outpatient basis to the community. Treatment for which he has to be accepted, treatment where he has to walk past an apartment building with young boys who live in it, and where he has to walk past a school to get to this treatment.

And as Dr. Wallace testified, there is no guarantee that Mr. Carta will be accepted into the treatment he's put forth. There is no guarantee that he will participate in

treatment. And there is no guarantee that he won't violate the restrictions of the treatment program.

One of the three elements that the government must prove in this case is that Mr. Carta has engaged or attempted to engage in sexually violent conduct or child molestation. And on this element, the first element, both experts agree. Both Dr. Phenix as well as Dr. Bard testified that Mr. Carta engaged in acts of child molestation. Dr. Phenix testified to eight discrete acts of child molestation, seven of which she testified were also sexually violent conduct:

The oral copulation of the three- to four-year old; oral copulation of a 13-year old not old enough to consent; oral copulation of a 15-year old; shooting a 15-year old with a BB gun after he refused to engage; molesting an intoxicated 13-year old; taking a 13-year old from California to Connecticut where he had sexual contact with him 30 or 40 times; orally copulating his seven-year old cousin; molesting a 17-year old boy that had passed out; and orally copulating the younger 15-year old brother of his then 17-year old partner.

In the Sex Offender Treatment records that were admitted into evidence Mr. Carta himself admitted to dozens of illegal sexual encounters with children. There is enough core conduct, Your Honor, that you need not decide whether

the acts were either sexually violent or child molestation as all of the experts agree that there is more than enough child molestation to satisfy the first criteria.

Mr. Carta has admitted to child molestation. Dr. Bard testified that he has, Mr. Carta has committed child molestation. Dr. Phenix testified that Mr. Carta committed both child molestation and sexually violent conduct. And Dr. Wood testified and documented evidence of a number of acts of child molestation as well as sexually violent conduct.

The government must also prove that Mr. Carta suffers from a serious mental illness, abnormality or disorder, the second element of the statute.

This Court has heard a great deal of discussion about paraphilia NOS with a description of hebephilia. But before this Court are three diagnoses of paraphilia NOS with the hebephilia description.

Dr. Monica Ferraro's diagnosis is contained within Dr. Bard's report, Dr. Wood, the psychological intern who diagnosed Mr. Carta for the purpose of treatment and before the Adam Walsh Act was passed, and Dr. Phenix who has over twenty years of experience in the field of sex offenders.

The evidence has shown that while everyone in the field does not agree on the diagnosis, it is widely accepted in the field and used by many courts as a basis of civil

commitment of sexually dangerous persons.

Hebephilia has been referenced as far back as a 1955 study by Glueck to the present and in peer review scientific articles and texts by respected researchers in the scientific field.

This Court also heard the testimony of Dr. Michael Wood. Dr. Wood was Mr. Carta's treatment provider at FCI Butner. And at the time Dr. Wood treated Mr. Carta he was in his doctoral internship. All of his work though was signed off by a psychologist. And at the time he came to Butner Dr. Wood had worked with sex offenders before. He had done thousands of psychological assessments of sex offenders for the Arkansas Department of Correction.

And you heard Dr. Wood testify that during his treatment of Mr. Carta that Mr. Carta needed a lot of attention. That he was struggling in the Sex Offender Treatment Program and so he was meeting with him more than he had expected to or more than was expected as laid out in the treatment plan.

Dr. Wood performed a psychosexual evaluation on Mr. Carta and eventually he prepared a discharge report when Mr. Carta quit the program, both of which are admitted into evidence in this case.

And at the end of Dr. Wood's psychosexual evaluation of Mr. Carta, his diagnostic impression was that

Mr. Carta suffered from an Axis I diagnosis, disorder of paraphilia NOS, hebephilia.

Dr. Wood also diagnosed Mr. Carta at the time he treated him --

**THE COURT:** What definition do you give to it?

**MS. STACEY:** Paraphilia NOS (hebephilia).

**THE COURT:** What about the hebephilia?

**MS. STACEY:** The hebephilia is a descriptor --

**THE COURT:** How do you define it?

**MS. STACEY:** Define "hebephilia" as an attraction to post-pubescent children or to children in the midst of puberty. And that testimony you heard from Dr. Wood, Dr. Phenix, as well as Dr. Phenix and as referenced by the various scientific articles that we referred to.

Now, Dr. Wood also diagnosed Mr. Carta at the time he treated him with a variety of substance abuse disorders. And you heard Dr. Wood testify that he based his diagnosis of paraphilia NOS with hebephilia on Mr. Carta's longstanding sexual attraction to and preference for post-pubescent teenage males.

You also heard the testimony of Dr. Amy Phenix who is a leader in the field of sex offender evaluation with over twenty years experience. And also an author of Static-99 Coding Manual for assessing risk of reoffense in sex offenders.

And because the respondent can't attack Dr. Phenix on the merits of her opinion, they direct this Court to an opinion about a female sex offender on an issue that is not even before this Court. It's a red herring, Your Honor.

Dr. Phenix diagnosed Mr. Carta with paraphilia NOS, a diagnosis found in the DSM-IV. She testified how Mr. Carta's preferred age range for sex included teenagers as young at 13 years old. And she testified that paraphilia NOS is for diagnosing paraphilias that don't meet the criteria of any specific category listed in the DSM.

She testified that this diagnosis was generally accepted in the medical community, in the scientific community. And while Dr. Bard would have you believe that there is no criteria for paraphilia NOS with the description of hebephilia, Dr. Phenix testified to the exact diagnostic criteria that she used and the criteria that is listed in the DSM under paraphilia NOS.

The diagnostic criteria has been admitted into evidence in this case. And that diagnostic criteria is Mr. Carta's recurrent, intense, sexually arousing fantasies, sexual urges or behaviors generally involving children or non-consenting partners.

Even Dr. Bard had to agree that Mr. Carta had recurrent, intense, sexually arousing fantasies and sexual urges or behaviors.

Dr. Phenix testified about Mr. Carta's impairment due to his obsession for young boys. Not just an attraction but an obsession for young boys. An obsession that caused him to miss work, to neglect his hygiene, not to shower and to sit at a computer viewing child pornography for 12 to 14 hours a day, an obsession that resulted in his accumulating over 50 thousand images of child pornography and an obsession that had him soliciting minors for sex over the Internet.

As a result Dr. Phenix opined to a reasonable degree of professional certainty that Mr. Carta suffered from paraphilia NOS, a medically accepted illness, abnormality or disorder. She testified that many respected clinicians diagnosed this condition and the recent article by Blanchard in 2008 codified the thinking and supported the scientific basis of this condition.

And if Your Honor looks at some of the articles and the replies to that article that the respondent states, you'll see that many of those people that responded to the article are beyond the mainstream. One even arguing that pedophilia shouldn't be in the DSM: An attraction to children under the age of 12.

Finally Dr. Phenix testified that Mr. Carta's paraphilia not otherwise specified was a serious mental illness, abnormality or disorder and that it was so because

Mr. Carta sexually assaulted a series of non-consenting children for more than a six-month period of time.

Dr. Phenix also diagnosed Mr. Carta with a personality disorder not otherwise specified with antisocial and borderline traits, another serious mental illness, abnormality or disorder. And as a result Dr. Phenix testified that Mr. Carta's personality disorder contributed to Mr. Carta's likelihood of reoffending against children in the future.

You also heard from the respondent's expert Dr. Leonard Bard. Dr. Bard diagnosed Mr. Carta with nothing. This is Dr. Bard who assisted with the defense of the case, served as a consultant for the respondent to their case, and who has testified over a hundred times in the past four years and only for the defense in civil commitment proceedings. He has never said in that period of time that anybody was a sexually dangerous person.

He omitted the ages of Mr. Carta's victims in his report. He took Mr. Carta's self-report as true even when records from the Bureau of Prisons and Mr. Carta's own therapist contradicted what Mr. Carta told him.

When testifying about Mr. Carta's victims, Dr. Bard omitted the 13- and 14-year olds, always going to the latter end of the teenage years. Victims when even by Mr. Carta's own admission the majority of which were 13 years old.

But even Dr. Bard had to admit that Mr. Carta's preference for children was 13 to 18 years old. And even Dr. Bard admitted that Mr. Carta had engaged in acts of child molestation, acts that he termed were sexually violent to others -- sexually dangerous acts to others. Dr. Bard characterized Carta's behavior as, and I quote, "illegal, harmful and exploitive sexual acts."

Now, Dr. Bard doesn't like the diagnosis of paraphilia NOS but he had to admit that individuals in the profession believe that paraphilia NOS with a descriptor of hebephilia existed. He admitted that there was scientific literature on paraphilia NOS. He admitted that well known and well respected members of the scientific community have referred to hebephilia or had testified to it in other cases as a diagnosis.

Dr. Bard finally admitted that the DSM diagnosis of paraphilia NOS does exist in the DSM but then said the descriptor of hebephilia did not.

Dr. Bard claimed that there was no diagnostic criteria for paraphilia NOS despite its existence in the DSM and, again, which were admitted into evidence.

And finally Dr. Bard said that hebephilia didn't exist as a descriptor of the paraphilia NOS diagnosis because it wasn't listed. And he testified to this despite the fact that within the DSM itself the language says

paraphilia NOS is included for coding paraphilias that do not meet the criteria for any of the specific categories listed in the DSM but say these examples are included but not limited to.

The testimony by Dr. Bard is illustrative of Dr. Bard's defense proclivity and his opinion should be weighted accordingly.

The respondent inaccurately portrays Judge Saris's decision, a decision that was not final as to the issue of hebephilia. In that case the issue of hebephilia was not litigated fully before Judge Saris. Judge Saris left the issue open for the government to pursue later due to this other diagnosis of pedophilia.

Now, disagreement in the profession about hebephilia does not even sustain respondent's Daubert challenge. As the Supreme Court in Kansas v. Hendricks opined, disagreements between psychiatric professionals on the definitions do not tie the government's hands in setting the bounds of its civil commitment laws. In fact, it's precisely where such disagreement exists that legislatures have been afforded the widest latitude in drafting such statutes and went on to explain when a legislature undertakes to act in areas fraught with medical and scientific uncertainties, legislative opinions must be especially broad and courts should be cautious not to

rewrite the legislation.

This case is not just about a sexual attraction. It's about Mr. Carta's compulsion. And despite his efforts to help the defense, Dr. Bard admitted normal men don't target 13-year old boys exclusively for sex as Mr. Carta did.

Dr. Bard admitted normal men don't act on their arousal to young boys over decades of time with multiple 13-year old partners as Mr. Carta did. Even Dr. Bard admitted that Mr. Carta did not act as normal men who are aroused to teenagers do. And if Mr. Carta did not act normally, he acted deviantly for that is the very definition of deviant, deviating from what is considered normal.

Dr. Bard diagnoses Mr. Carta with nothing, not even a personality disorder citing Mr. Carta's good behavior in the past ten years. And that's despite the numerous instances of threatening behavior exhibited by Mr. Carta.

Mr. Carta threatened to kill his mother. He threatened to kill his daughter and her boyfriend. He was insolent to staff in prison. He became enraged and sought revenge against another member of the Sex Offender Treatment Program. And he stole property from another inmate.

But Dr. Bard ignores those behaviors, fails to document those behaviors, and diagnoses Mr. Carta with nothing despite his statutory obligation to do so in an

expert report. And despite having no diagnosis Dr. Bard assesses Mr. Carta with a risk of reoffense. And he assesses that of low to moderate if released to the community.

The Supreme Court requires a volitional impairment and Dr. Bard testified quite clearly that Mr. Carta's volition was impaired. It makes common sense and it's evidenced by his compulsive viewing of his child pornography and the behaviors he has exhibited.

Antisocial personality disorder and/or substance abuse has the requisite impairment to satisfy the constitutional standards set forth in Kansas versus Crane, holding that in order to be committed a person need not have a total inability to control the behavior. And, in fact, Hendricks sets forth no requirement of total or complete lack of control.

Insistence upon absolute lack of control as the respondent has asked you to do would risk barring the civil commitment of highly dangerous persons suffering severe mental abnormalities. It's enough to say for these civil commitment proceedings that there must be proof of serious difficulty in controlling behavior. And both experts agree that Mr. Carta has had that difficulty.

On the final element, Your Honor, the government has proven that as a result of Mr. Carta's serious mental

illness, abnormality or disorder, Mr. Carta will have serious difficulty refraining from sexually violent conduct or child molestation if he is released.

Dr. Phenix testified that Mr. Carta is at high risk to reoffend. And despite diagnosing him with nothing, Dr. Bard has testified that Mr. Carta is at a low to moderate risk to reoffend against children. Both Dr. Phenix and Dr. Bard scored Mr. Carta on the two actuarial instruments that you heard about: The Static-99 and the MnSOST-R.

Dr. Bard scored Mr. Carta with a score of five putting Mr. Carta in a group of other sex offenders who scored in the moderate to high range for reconviction.

Dr. Phenix scored Mr. Carta a six, meaning that Mr. Carta's score matched other sex offenders who have scored in the high range for reconviction.

Now, Dr. Phenix testified that these actuarial instruments actually underestimate the risk of reoffense because they focus on arrest and reconviction rather than the actual detection of sexual offending. And as we know from this case, many sex crimes go unreported and they go undetected.

As a result, both experts considered dynamic factors, including treatment. And as Dr. Phenix testified, Mr. Carta has alienated his immediate family through

hostile, revengeful and aggressive behavior. While in custody he threatened to kill his mother when released. Separately he threatened to kill his daughter and her boyfriend upon release.

He slept with his daughter's boyfriend, then he told his daughter about it. He has had a long history of problematic relationships. He tries to destroy partners when the relationships end. He preys on others for gain. He has alienated his family. And there is no evidence that Mr. Carta has a support network if he is released, a support network that Dr. Wallace testified was an essential component of treatment.

Mr. Carta participated in treatment for seven months in North Carolina. And he was in a controlled environment. He was living with other sex offenders. The treatment room was in the same location. The therapist's office was in the same location. There were no teenagers, no computers and Mr. Carta still couldn't handle it.

And just like his offense pattern in the community, he sought out younger members of the treatment program. He admitted he was attracted to them but he did that under the guise of mentoring them in the program.

When other members confronted him in therapy, he sought revenge. He preyed on the newer younger members of the Sex Offender Treatment Program to whom he was attracted

for his own gain. His sexual attraction to these men and his own sexual needs prevented him from getting the treatment he so desperately needs.

Dr. Bard and Dr. Phenix agree that failure to complete treatment increases the risk of reoffense. And there is no dispute that Mr. Carta has failed treatment. And as a result Dr. Phenix said he was at a higher risk to reoffend. Yet, despite failing treatment, despite being aware of the research that says it increases the risk of reoffense, Dr. Bard decreased Mr. Carta's risk from the actuarial scores. And he used the adjusted actuarial approach when he did so.

Now, Your Honor, the government believes that the evidence shows by clear and convincing evidence that Mr. Carta is a sexually dangerous person and should be committed. And this Court has undoubtedly spent more time with Mr. Carta than any other court. This Court has heard evidence for three days and knows Mr. Carta better than any other Court that he has been before.

If the Court agrees that the government has met its burden of proof, it would retain jurisdiction over Mr. Carta. He can undergo the treatment that even Dr. Bard says he needs. It's difficult, if not impossible, to expect that he can complete his treatment on an outpatient basis.

This Court has asked what happens to Mr. Carta if

he is committed. And under Section 4248(d) if this Court finds that Mr. Carta is a sexually dangerous person, the Court will commit Mr. Carta to the custody of the Attorney General. The Attorney General will release Mr. Carta to the appropriate official of the state in which he was domiciled or was tried and the state will assume responsibility for his custody, care and treatment.

The Attorney General has to make reasonable efforts to cause such a state to assume the responsibility. And if the state won't take Mr. Carta, then the Attorney General will place Mr. Carta in treatment in a suitable facility.

The Bureau of Prisons plans to treat committed persons at its facility in Butner, North Carolina. They have hired a director, Karen Steinhauer (ph.), and appointed a clinical director in Dr. Hernandez.

That Mr. Carta might be the first person committed is not a rational argument not to commit him now. There must always be a first, Your Honor. Butner obviously has the expertise to treat him as evidenced by Dr. Wood's testimony and the program has existed there for years.

And if he is committed, this Court retains the jurisdiction to see that that is done, that he gets his treatment and that he avails himself fully of that treatment.

Mr. Carta can petition this Court for release

within six months of his commitment. And once committed, the Court retains the right to release someone on the lifelong term of conditions pursuant to 4248.

Counsel for Mr. Carta or his legal guardian may file with this Court a motion for a hearing to determine whether he might be discharged from the facility that he is at but no motion can be filed within 180 days of a court determination that he should be committed.

For all of these -- if Mr. Carta is released to the community, Your Honor, he is being released to Open Hearth. Whether you call it a homeless shelter or transitional housing --

**MS. KELLEY:** Objection. This is not correct. That's not where he is being released to.

**THE COURT:** Well, I can't know which -- I have heard this Open Hearth talked about.

**MS. KELLEY:** He had planned to be released there on the last date but he --

**MS. STACEY:** There was no evidence --

**MS. KELLEY:** -- U.S. Probation to help him find a place to live.

**THE COURT:** I thought that he was supposed to go to Butner.

**MS. KELLEY:** If you don't release him, he is not getting out and I don't know where he is going to go. But

if you release him, he will go to Connecticut and be under the supervision of Probation. But there is no evidence that he is going to Open Hearth.

**MS. STACEY:** The evidence is contained in Dr. Bard's report. If he is released, he is going to Open Hearth. And that's contained in Dr. Bard's report.

But wherever he is being released to, if he is released --

**THE COURT:** If he is released, the probation officer, what is the gentleman's name that --

**MS. STACEY:** Officer Collette.

**THE COURT:** Officer Collette, he is going to supervise him. In other words, he is not going anyplace unless --

**MS. STACEY:** That is absolutely right. But he becomes released as an untreated sex offender, Your Honor. He will be released as an untreated sex offender who will have serious difficulty in refraining from engaging in sexually violent conduct or child molestation.

And he is an untreated sex offender who admits that even today he has an attraction to 13-year old boys. He has a deviant interest in young male boys that he's had all his life. And he is an untreated sex offender who wherever he's released, if you release him, has no relapse plan and has never completed treatment and learned, never learned how to

manage the skills to manage his sexual deviance.

The respondent says he's over it, it's no big deal, look at who his victims were. Your Honor, this is not about blaming his victims. This is about Mr. Carta taking responsibility and getting treatment for the sexually dangerous person that he is. And he is a sexually dangerous person. A sexually dangerous person who will have serious difficulty refraining from sexually violent conduct and child molestation.

And, therefore, Your Honor, the government requests that you enter judgment finding him to be sexually dangerous and simply commit him as a sexually dangerous person.

**THE COURT:** Okay. Very fine presentation by both sides, very professionally done. It was a pleasure to preside over the trial. I will do my best with the record and then come up with a decision.

What I would like to have you both do is to give me within 30 days after you get the transcript, you have to order a transcript, within 30 days give me proposed findings of fact reference with specificity to the transcript. No editorials in the proposed findings of fact. Just, No. one, John Jones is 25 years old, and you will cite transcript page 3, line 6. That is what I am looking for there.

You may also accompany it with a memorandum if you want. I have your memoranda. If you feel comfortable

supplementing the proposed findings of fact with a memorandum, you may do that as well.

But I would like those 30 days after you receive the transcript.

Carol, when are you going to give them the transcript? In about a half hour?

(Laughter.)

**THE COURT REPORTER:** Two to three weeks I hope.

**THE COURT:** You will get it in about three weeks. And we will hear from you a month after that.

Okay. Thank you, everybody.

**THE CLERK:** All rise for the Honorable Court.

Court is in recess.

(WHEREUPON, the proceedings were recessed at 4:35 p.m.)

C E R T I F I C A T E

I, Carol Lynn Scott, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/CAROL LYNN SCOTT

CAROL LYNN SCOTT
Official Court Reporter
John J. Moakley Courthouse
1 Courthouse Way, Suite 7204
Boston, Massachusetts 02210
(617) 330-1377